RECORD NOS. 16-1357(L), 16-1421

ORAL ARGUMENT HAS NOT YET BEEN SCHEDULED

In The
United States Court of Appeals
For The District of Columbia Circuit

E.I. DU PONT DE NEMOURS AND COMPANY,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION,

Intervenor for Respondent.

ON PETITION FOR REVIEW OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

JOINT APPENDIX
VOLUME II OF II
(Pages 533 – 887)

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EDGE MOOR HEARING TRANSCRIPT
(NLRB CASE NO. 4-CA-33620)

Dated September 13, 2005

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[1] **JUDGE BOGAS:** I'm wondering if that's even an issue.
[2] Unless — putting aside the merits of your first defense, the
[3] second defense unless the parties bargain to impasse their new
[4] contract during the hiatus between two contracts, don't you have
[5] to follow the terms of the prior contract. Isn't that the
[6] standard, not whether the union was offered a reasonable
[7] opportunity to bargain.
[8] **MR.SUFLAS:** No, Your Honor, we disagree with that. We
[9] believe that there is well established Board Law that says that
[10] even in the context of an open contract if the parties are
[11] bargaining an issue, if that is an issue of some temporal
[12] importance, and there is a Bell Atlantic Case that we believe
[13] that's right on point, if the union's been given the opportunity
[14] to bargain, if the union sits on its rights and does nothing,
[15] makes no proposals, does not afford itself of its reasonable
[16] opportunity to bargain then the employer has the opportunity to
[17] move ahead unilaterally if it is faced with time deadlines such
[18] as those present here.
[19] So, we believe that the union, if Your Honor finds, as we
[20] think you should, that the union sat back, did nothing except
[21] filing a ULP charge, that that is not enough. The union has to
[22] do more in order to afford itself of a reasonable opportunity to
[23] bargain.
[24] **JUDGE BOGAS:** Does this document, Respondent's R-1 make
[25] any specific reference to the facts of this case or does it ...

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[1] **MR.SUFLAS:** No, clearly it does not, Your Honor. This is
[2] a strategy paper as indicated and on the cover page and we would
[3] simply — and all we're going to use it for is on page 4 there
[4] is a list of strategies and we believe that, as is often the
[5] case, in corporate campaign literature it talks about filing an
[6] NLRB charges and bringing litigation to support the union — a
[7] union's bargaining posture.
[8] **JUDGE BOGAS:** Anything else from the General Counsel or
[9] the Charging Party on this?
[10] **MR. CONLEY:** No, Your Honor.
[11] **MS. HOSTETLER:** Your Honor, I would just note that one,
[12] this doesn't have anything to do with a corporate campaign and
[13] the NLRB charges talked about here have to do with a plant
[14] closure — merger and closure concerns so — or I'm sorry,
[15] sales, mergers and closures, so again, I don't think it's
[16] relevant. And two, I don't believe there is a case
[17] that supports Respondent's proposition that a defense to a
[18] unilateral implementation is union motive and three, the
[19] stipulations show that the time period — during the time period
[20] that the employer announced the changes the union proposal was
[21] on the table.
[22] Then fourth, the fourth element I would add is that there
[23] is also in the stipulations regarding the case that arose
[24] several years ago in Yerkes, which by virtue of a Board
[25] settlement at a DuPont Plat in Buffalo, New york, DuPont

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[1] Corporate did not implement the premium changes for a number of
[2] years at that facility so I don't believe exigency is an
[3] argument here.
[4] **JUDGE BOGAS:** Okay. I'm going to sustain the objection to
[5] this document at this time. Counsel, you can feel free to re-
[6] offer it if at some point there is — you can even show that
[7] there is evidence that the Charging Party relies on this.
[8] document or used this document in what it did in this case, but
[9] barring that, at this time I'm sustaining the objection on the
[10] basis of relevance.
[11] (Respondent's Exhibit R-1 rejected)
[12] **MR.SUFLAS:** Thank you, Your Honor. We'll call Ms. Keyser
[13] to the stand.
[14] **JUDGE BOGAS:** Please remain standing and raise your right
[15] hand.
[16] Whereupon,
[17] DENISE KEYSER
[18] Having been first duly sworn, was called as a witness and
[19] testified as follows:
[20] **JUDGE BOGAS:** Be seated. Mr. Suflas?
[21] **DIRECT EXAMINATION**
[22] **BY MR. SUFLAS:**
[23] **Q:** State your name for the record, please?
[24] **A:** Denise M. Keyser.
[25] **Q:** Where do you work?

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[1] **A:** I'm a partner at Ballard, Spahr, Andrews and Ingersoll in
[2] the New Jersey office.
[3] **Q:** Do you have a — do you limit your practice to any
[4] particular field?
[5] **A:** Yes, I practice exclusively in the field of labor and
[6] employment law.
[7] **Q:** How long have you practiced in the area of labor and
[8] employment law?
[9] **A:** Since 1983, 22 years.
[10] **Q:** Do you have experience as a lead bargainer in
[11] union/management negotiations?
[12] **A:** Yes, I do, a good part of my practice consists of handling
[13] collective bargaining negotiations.
[14] **Q:** Approximately how many union contracts have you bargained
[15] over the years?
[16] **A:** Many — a lot.
[17] **Q:** What was your role on behalf of the DuPont Edgemoor site in
[18] 2004/2005 in their union negotiations?
[19] **A:** I was the lead bargainer for the Edgemoor Plant in the
[20] plant's negotiations with what was then P.A.C.E. Local 2-786.
[21] **Q:** Now, first, let me ask you some background questions and
[22] let me as you about the topic of benefits — employee benefits
[23] generally. In your experience as an employment lawyer and as a
[24] contract bargainer, how important is the issue of employee
[25] benefits to management generally?

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[redacted]

Q: What issues have employers generally found important from the prospective issue of medical benefits particularly in the past few years?

A: I think everyone probably is pretty familiar with the rising costs of medical benefits an in my experience in collective bargaining negotiations that has been an issue that the parties have had to confront in terms of cost sharing and to present a competitive benefits package to the people at a good cost.

Q: Now, was the issue of benefits important to the Edgemoor site management in these 2004 negotiations?

A: Yes, it was. The plant went into the negotiations wanting to continue to give BeneFlex -- the BeneFlex Plan to all of its employees, union and non-union on the same terms as it gave BeneFlex to all of its employees and to DuPont employees throughout the country.

Q: Why was that an important goal for the company?

A: Well, it my understanding it's a very good plan and by having a uniform plan that is company-wide, DuPont is able to take advantage of economies at scale, I believe there's

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something like 60,000 employees in the plan -- take advantage of economies of scale and deliver very competitive benefits at a competitive cost. There is uniformity throughout the company.

Q: Now, the stipulation refers to the company's bargaining proposal with respect to Article 9, Section 3. First, Article 9, what portion of the contract is that?

[redacted]

Q: What was the company's proposal with respect to Article 9, Section 3 in the 2004 negotiations?

A: The plant proposed that it would continue to provide BeneFlex to the bargaining unit on the same terms as BeneFlex was provided to all of the DuPont employees, that is that the plant would retain the right to make changes -- annual changes effective each January on the same terms that it made those changes to all other employees.

We wanted to preserve that right both in and out of contract.

Q: What were the reasons for the company making this proposal?

A: Well, I mean first of all the plant felt it was a good plan and they wanted to keep everyone in BeneFlex. We made the proposal to make explicit the plant's right to make the changes in our contract because there has been litigation at both the Yerkes' Plant in New York, I think in the Buffalo Area and at

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the Louisville Plant that DuPont has in which other P.A.C.E. locals took the position that these changes -- the annual changes could not be made out of contract without bargaining. The plant wanted to preserve the right, make explicit it had the union at Edgemoor acknowledge the right to make those changes on a unilateral basis as it has during contract.

Q: Was it the company's position that it has the right to make unilateral changes to BeneFlex out of contract with or without your proposal in Article 9, Section 3?

A: Yes, I think I said that. We wanted to make it explicit, we wanted the union to explicitly agree to that, but I told them in the negotiations over and over again I want to put the proposal first on the table, that the plant felt that it had this right and that we simply wanted to have agreement that we did have this right so that we would avoid the litigation that had arisen in the other sites.

Q: Now, with respect to the company's proposal in Article 9, Section 3, did the parties have a shorthand reference to that proposal during the negotiations?

[redacted]

Q: Now, before we get into the specifics of the negotiations, let me ask you a general question. Did the Edgemoor bargaining team ever refuse to bargain with the union over the 2005

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specific BeneFlex changes?

A: No.

Q: Could you explain your answer, please?

A: Well, we were at the table talking at the time the 2005 changes were announced which was on October 11th. We were meeting pretty -- we, meaning the plant negotiating team were meeting pretty regularly with the union negotiating team and the changes were not raised by the union across the table for bargaining or for discussions really.

Q: Now, let me take you to the start of the negotiations. At the start of these negotiations who comprised the union's bargaining team?

A: At the start of the negotiations the union team was headed by Kathleen Hostetler, who was counsel for P.A.C.E. International; Jim Briggs, who was a P.A.C.E. International representative based in Buffalo; Mark Schilling, who was the Local President; Tom Campbell, who was the Local Vice President and a number of other bargaining unit individuals; Carol Price, who I believe was the recording secretary; Joe Witkowski, who I believe was the contract chairman; Martin Frisby, who was also a bargaining unit employee and I think Darin Denato came to several meetings.

Q: Who served as the primary union spokesman during these negotiations?

A: The primary union spoke-people tended to be Ms. Hostetler,

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Mr. Briggs and Mr. Schilling although other people did talk.
Q: Now, did there come a time when the composition of the union committee changed?
A: Yes.
Q: How did it change?
A: Beginning on September 24th, 2004 two attorneys appeared for the union, Ms. Hostetler and James Runkel, who was a Philadelphia based attorney with Speer, Wilderman also appeared for the union. Ms. Hostetler left, I believe, in the middle of that session and Mr. Runkel then acted as attorney and lead spokesperson for the balance of 2004.
Q: Now, we've seen General Counsel put into evidence some minutes of the bargaining sessions; did the company maintain minutes of the bargaining sessions?
A: Yes, it did.
Q: Were these minutes published in any way?
A: I believe they were posted on the plant website.
Q: Did the union keep minutes of these meetings?
A: Yes.
Q: Were those published as well?
A: I believe the union posted them also on its website.
Q: Now, let me turn you to the specifics of the negotiations; do you recall the date of the first bargaining session?
A: Yes, April 29th, 2004.
Q: I assume you were present throughout at every bargaining

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session?
A: I was.
Q: What did the company — strike that. What did the parties review at this initial bargaining session with respect to the topic of BeneFlex only?
A: Okay, I gave an overview of the plant's proposal, what the plant was seeking to achieve in the contract negotiations. I covered a number of topics and I covered BeneFlex as well and I explained that the plant would be seeking to change the benefits article in the contract in that the plant wanted to confirm, in writing, its right to make changes to the BeneFlex Plan on an annual basis in and out of contract.
I covered that with them an I explained the reasons why, as I had said before.
Q: What were the reasons?
A: It was based on the litigation that had arisen elsewhere at other DuPont Plants and we wanted to avoid that situation here and simply have the parties agree that this was a right that the plant had.
Q: Did you — without getting into the details, did you identify other bargaining topics that the company wished to cover during these negotiations?
A: Yes, I gave an overview of what items we would be making proposals on.
Q: And, was the Beneflex waiver the company's only bargaining

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goal?
A: No, we had a number of proposals and I raised a number of different items. We have a subcontracting issue that we wanted to deal with, I think there were also bump and bid and overtime issues and a number of other items.
MR.SUFLAS: Your Honor, I'd just like to note for the record that because we have premarked the company exhibits they're not necessarily going to follow in order and there are going to be gaps in the numbers.
JUDGE BOGAS: That's fine, I did ask you to pre-mark them, I understand that that means that they may come in out of order.
MR.SUFLAS: I'd like to mark for identification Respondent's Exhibit R-4. I'm showing it to the witness.
(Respondent's Exhibit R-4 identified)
BY MR. SUFLAS:
Q: Denise, can you tell me what Respondent's Exhibit R-4 is?
A: Respondent's Exhibit R-4 is a document that I drafted and presented to the union at the May 26, 2004 bargaining sessions. I title it non-economic proposals of E.I DuPont De Nemours and Company on behalf of it Edgemoor Plant, Edgemoor, Delaware and it's a summary of the plant's initial proposals for a revised collective bargaining agreement between the plant and P.A.C.E. and its local.
Q: Why did you present this in a summary form?
A: I called it a summary because I did not, for every

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proposal, I did not necessarily give precise proposed contract language. On some of them I did, but on others, I simply raised the issues and indicated what the plant would be seeking in an effort to get some dialogue going and to get the union's opinions and input before we drafted proposed contract language.
Q: This May 26 session, I believe this was the shortest session; is that right?
A: Yes.
Q: Now, what was in the summary of proposals with respect to BeneFlex?
[redacted]
Q: Now, at the table did you discuss that provision with the union?
A: I did. I explained what — I handed the proposal out and the union reviewed it and then we walked through each of the proposals and I explained what we were looking for.
Q: What was the union's response, if any, to this summary of proposals?
A: They indicated that they might be making — I believe they indicated that they might be making proposals on benefits and

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BeneFlex as well.

MR. SUFLAS: We move Respondent's R-4, Your Honor.

JUDGE BOGAS: Counsel for the General Counsel?

MR. CONLEY: No objection.

JUDGE BOGAS: For the Charging Party?

MS. HOSTETLER: No objection.

JUDGE BOGAS: Respondent's R-4 is received.

(Respondent's Exhibit R-4 received)

BY MR. SUFLAS:

Q: Now Denise, next let me call your attention to the sixth bargaining sessions on June 14th of 2004. Let me show you what I'm going to have marked as Respondent's Exhibit R-6. If you could pleases tell me what denotes Respondent's Exhibit R-6?

(Respondent's Exhibit R-6 identified)

A: These are proposals that the plant handed out at the June 14, 2004 negotiating session and you'll see that this is longer than Respondent's R-4 because the union requested that they receive — or that I put into writing precise contract language for each of my proposals.

At either the May 26th meeting or one of the other meetings between May 26th and June 24th the union had said, look, they didn't really want to deal with concepts was what they called my summary of May 26th and they wanted precise contract language so in response to what they requested, we put all of our proposals into detailed writing.

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Q: As indicated on the first page of R-6, these were the company's non-economic proposals?

A: That's right, that's right.

Q: Turning your attention to page 11, what was the company's formal proposal with respect to Article 9, Section 3?

A: Well, that's it there. It's still capital letter D and it's about half a page on page 11 and do you want me to read it into the record?

Q: No, I don't think you need to read it into the record. With respect to the first paragraph of that proposal was that new language?

A: I think that section — you know, I don't recall. I think that Section 3 may have been modified a bit from the then current Section 3 of Article 9 and then the last two paragraphs were brand new.

Q: Let me call your attention to the second paragraph of the proposal; could you describe for the record what the scope of that paragraph proposal was?

A: Well, the second paragraph essentially, as I explained at the meeting, was the plant is saying here that BeneFlex is going to be administered in the same manner as it was administered throughout the company. The company's Edgemoor participants, are going to be treated the same way and they would receive the same benefits as others throughout the company.

So all we were saying is that we would continue to

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[1] administer the plan in the same way we had been and that is that
[2] Edgemoor would have the same benefits as everyone else in
[3] BeneFlex.
[4] **Q:** Now, with respect to that proposal did the union have any
[5] response?
[6] **A:** With respect to the whole proposal or with respect —
[7] **Q:** No, no, just with respect to the second paragraph dealing
[8] with consistency of application?
[9] **A:** I don't recall any specific response from the union.
[10] **Q:** Do you recall the union ever raising a question or an
[11] objection to that language indicating that the plan at the
[12] Edgemoor site would be administered in a manner consistent with
[13] the company-wide plan?
[14] **A:** No, I don't. The parties discussions about this proposal
[15] centered on the last paragraph.
[16] **Q:** Let's turn to that, and the last paragraph is the provision
[17] that indicates that the company's right to change the plan would
[18] survive the contract expiration?
[19] **A:** That's right, that was our proposal that the plant would be
[20] able to continue to make the same type of changes that it made
[21] in contract, outside of contract as well, unless and until the
[22] parties mutually agreed to change or terminate this Section 3
[23] was the proposal.
[24] **Q:** Next, let me call your attention to Joint Exhibit 29; do
[25] you have a copy of the Joint Exhibits there with you?

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[1] **A:** I don't.
[2] **Q:** All right, let me give you one. I'd like to call your
[3] attention to Joint Exhibit 29.
[4] **A:** Joint Exhibit 29?
[5] **Q:** Yes.
[6] **A:** Okay, I have it in front of me.
[7] **Q:** This is a letter dated June 14th, 2004 addressed to you
[8] from Ms. Hostetler, counsel for P.A.C.E.; how was this letter
[9] delivered to you?
[10] **A:** [illegible]
[15] **Q:** So, this was handed to you at this sixth bargaining
[16] session?
[17] **A:** Yes, I believe so.
[18] **Q:** Briefly, for the record, what was it that the union was
[19] expressing in this letter?
[20] **A:** Well, in this letter she writes that the union recognizes
[21] that — this letter addresses the plant's proposal to be able to
[22] change BeneFlex in and out-of-contract and she states the Union
[23] recognizes that the plant could propose this language that it's
[24] not illegal, but she takes the position that the proposals are
[25] permissive subject to bargaining and writes that the union is

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free to consider it, but it's not mandated to bargain it to impasse.

She goes on to say that the company can't legally compel the union to relinquish its right to bargain to impasse only those subjects which are mandatory, so this is in effect her objection to the — written objection to that language, that proposal.

Q: Did the company generally agree that the out-of-contract waiver of proposal that it was making was a permissive subject of bargaining?

JUDGE BOGAS: Counsel, aren't these subjects dealt with in the stipulation, I thought that they were. I reviewed the stipulation pretty quickly, but my understanding was that these — this back and forth was detailed in the stipulation. I'll allow you some latitude with this, but I'm just suggesting —

MR. SUFLAS: This is my last question on this topic, Your Honor, but thank you, I'll keep that in mind.

THE WITNESS: I'm sorry, what's your question, Steve?

BY MR. SUFLAS:

Q: The question was, did the company express — with respect to the proposal, — the BeneFlex waiver giving the company the right to make out-of-contract changes in BeneFlex, did the company generally agree that this was a permissive subject of bargaining?

A: Yes.

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Q: Was that expressed across the table?

A: Yes.

Q: Next, I show you what has been pre-marked as Respondent's Exhibit 5. Respondent's Exhibit 5 is — well, can you tell me what Respondent's Exhibit 5 is?

(Respondent's Exhibit R-5 identified)

A: This is another hand-delivered letter from Ms. Hostetler to me. I also received it on June 14th, I believe during the negotiations.

Q: If you could — if you could briefly summarize the subject matter into the record?

MR. CONLEY: Objection, the letter speaks for itself.

JUDGE BOGAS: Counsel, could you repeat your question?

MR. SUFLAS: Sure, I just asked her to briefly summarize the contents of the letter.

JUDGE BOGAS: I'll allow you to briefly summarize the topic of the letter.

MR. SUFLAS: Let me go about it this way, I'll withdraw that question.

BY MR. SUFLAS:

Q: What was the context, Denise, for this letter?

A: Well, this was June 14th so this was probably the sixth — about the sixth session that we had met and I had asked the union at many of the prior sessions when would I receive, you know, their set of proposals. I had given them essentially on the first day, on April 29th, an overview of all of our proposals on the 26th as you have in evidence here, I had given them a summary of each and everyone of the proposals we intended to make. Then on the 14th I did give them a specific language on each and every one of the proposals and I wasn't getting any indication from the union as to when I would be getting a package from them — a comprehensive set of packages and I thought this was odd.

I mean, in my negotiation experience usually the parties endeavor to put their packages, you know their sets of proposals or at least their non-economic proposals on the table as quickly as possible so you have a framework or a universe of what the parties wish-lists are or what they intend to bargain and then you can bargain from that framework and you know what's in play and what's not in play.

I had asked the union representatives a couple of times when I was going to get a set from them and this is her letter writing back saying that the union never agreed to provide us with a comprehensive set of proposals, instead the union stated, she writes and I'm quoting the letter now "Instead the union stated it would provide the company with 75 to 80 percent of our package."

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Q: Now in your experience as a bargainer, is it unusual that you not get a full set of proposals from a union?

MR. CONLEY: Objection, it's irrelevant.

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JUDGE BOGAS: Counsel?

MR. SUFLAS: Well, Your Honor, I think in order to understand what follows and in order to see how the union bargained the issue of benefits generally, I think this background is important.

JUDGE BOGAS: Could you repeat your question?

MR. SUFLAS: Sure, could you read that — well, let me re-ask it.

BY MR. SUFLAS:

Q: In your experience as a bargainer, was it unusual that —

JUDGE BOGAS: I'm going to sustain the objection.

MR. SUFLAS: Thank you.

BY MR. SUFLAS:

Q: Let me turn your attention —

MR. SUFLAS: Let me move Respondent's R-5 and R-6 into evidence.

JUDGE BOGAS: Counsel for the General Counsel?

MR. CONLEY: I object to R-5. R-6 reflects some proposals that, I don't object to that, but I think we've already done all that in a stipulation, but ...

JUDGE BOGAS: Let's do it with Respondent's R-6, does the Charging Party have any objection to Respondent's R-6?

MS. HOSTETLER: No objection.

JUDGE BOGAS: Respondent's R-6 is received.

(Respondent's Exhibit R-6 received)

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interested in voluntarily considering this proposal for the successor contract and considers this proposal off the bargaining table.

Q: Now, after you received this letter at the bargaining session on June 21 was there any discussion about that issue?

A: I probably have to — my recollection is we probably did discuss it although I can't recall the discussions expressly.

Q: Let me show you what's been marked as Respondent's Exhibit R-9 for identification. First, let me call your attention to the last paragraph on the first page and the first two paragraphs on the second page.

(Respondent' Exhibit R-9 identified)

A: The last paragraph on the first page?

Q: Yes.

A: All right.

Q: Does that refresh your recollection as to whether there was any discussion after you received Joint Exhibit J-31?

A: Yes, it does.

Q: What was the discussion to the best of your recollection?

A: Well, the union handed out this letter, this is the letter we were talking about, Joint Exhibit J-31. I questioned the union about their letter and I asked them if they were going to make a proposal on BeneFlex and we had a discussion about our proposal and I indicated to them, you know, where are they on BeneFlex.

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Q: What was the union's response?

A: Well, they said well, we don't want to bargain about — we consider your proposal to be a permissive topic and it's off the table. I said, well, you know, we had a discussion and I said well, this is our BeneFlex proposal are you going to make a counter-proposal on BeneFlex, there was some back and forth on that.

Q: What was the union's response when you asked them were they going to make a counter-proposal on Beneflex?

A: Well, I don't know that they responded specifically at this meeting although previously they had said that they were going to make a proposal on BeneFlex. I asked them if they were objecting to the plant's right to make changes in contract, I was trying to sort of figure out where they were on the BeneFlex proposal, what were their objections and what were they agreeing to.

I asked them about that and that is — that question was then answered with the Joint Exhibit J-30 which you referenced before.

Q: Before we get to Joint Exhibit J-30, let me ask you to turn to the fourth page of R-9 and let me ask you to look at the fourth page — the bottom of the fourth and the top of the fifth pages.

A: Okay.

Q: Was there further discussion on the BeneFlex issue at this meeting?

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A: Yes, that's right. When I asked them earlier in the negotiating session what were they objecting to, were they objecting to our right to make changes in contract and as I said, they really didn't give me a definitive answer and then they came — we took a caucus and they came back from the caucus, the union then handed me the letter which is Joint Exhibit J-30.

You know, in that letter, and we talked a little bit about it at the negotiating sessions, the union sort of waffles. It says "The union's response to this question is it's not accepting or rejecting this existing language at this time, so they didn't really give me an answer as to whether they agreed that we could make changes in and out-of-contract — in contract, or whether they agree to — or whether they were amenable to keeping the language as currently is in the contract.

But, then they went on to say but we're definitely objecting to the ability to make changes out-of-contract.

Q: Were those statements that you just referred to in Joint Exhibit J-30 were they made across the bargaining table before you received this letter?

A: I think they were. They're in the notes, I think the letter was given to me about the same time as we had the discussion.

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Q: Let me turn your attention to the second page of R-9 and that second paragraph. The minutes state, "Management states your letter indicates you would like BeneFlex proposals to be off the table so do you have a counter-proposal on health care." The union states, "Not at this time." Do you recall that statement having been specifically made at the table by the union?

A: The union stating not at this time?

Q: I'm sorry, do you recall those two statements being made at the table?

A: Yes, I know I asked that question and they said they didn't have anything at that point.

MR. SUFLAS: Your Honor, I'm withdrawing Respondent's R-9.

(Respondent's Exhibit R-9 withdrawn)

MR. SUFLAS: If I could have a moment.

BY MR. SUFLAS:

Q: Next, I'm going to ask you to look at what's been marked as General Counsel's Exhibit GC-9.

A: GC-9?

Q: Yes. Can you tell me what GC-9 is?

A: These are the plant's notes or minutes of the bargaining session on June 22, 2004.

Q: And, that was the tenth session?

A: It was probably about the tenth session, that sounds about right.

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asked the union were they going to negotiate with us over the proposal.

They said they did not want to talk about the proposal that we have made, they considered it to be off the table, they did not want to talk about it, they were very firm, now they were being very clear about it and I said, then you're going to have to make another proposal. I mean, this is our BeneFlex proposal, I've made it clear from the beginning, I went over it, you know, at the first meeting and at numerous sessions since then.

This is where we are on BeneFlex, this is what the plant is proposing on BeneFlex and if you're not going to even talk to us about it then you're going to have to make a counter-proposal on benefits.

Q: What was the union's reaction to that?

A: They were — you know, they accused me of taking BeneFlex off the table.

Q: Was that the case?

A: No, I said very clearly that this was our proposal, it would remain on the table and if they didn't want to talk about it, if they wouldn't even discuss it with us, which they said they wouldn't, then they were going to have to make a counter-proposal on benefits.

Q: Did the union make any proposals on BeneFlex at that session?

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A: I don't recall if it was that session or the next session when they proposed that they would take the BeneFlex — that they would accept BeneFlex as is, that is they would not change — they would accept the current — the language of the expired contract and we rejected that proposal and I said then, you're going to have to make a proposal.

Q: Do you know if that discussion occurred at this session on July 13th?

A: I don't recall if it was the 13th or the next one.

Q: On the 13th did the union reference Board Charges during the discussion over BeneFlex?

A: Yes, they said that if our position was that this was out - Kathleen Hostetler said that if the plant's BeneFlex proposal was the plant wanted to make changes in and out-of-contract, if that was our proposal that she would then file Board Charges over that.

Q: Then did you respond?

A: Well, she did file charges eventually and they were withdrawn.

MR. CONLEY: Objection.

JUDGE BOGAS: The basis for the objection?

MR. CONLEY: Well, the question was did she respond and instead the witness offered some other response that wasn't the response to the question.

JUDGE BOGAS: Sustained and stricken.

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BY MR. SUFLAS:

Q: Did the union file unfair labor practice charges over the company's position on the BeneFlex waiver?

A: Yes, they did.

Q: What was the disposition of those charges?

A: That charge was withdrawn.

MR. SUFLAS: Your Honor, I may have neglected to say this, we withdraw Respondent's Exhibits R-11.

(Respondent's Exhibit R-11 withdrawn)

BY MR. SUFLAS:

Q: Let me next show you what's been marked as Respondent's Exhibit 13, you can take a moment to look that over.

(Respondent's Exhibit R-13 identified)

A: Okay, I've looked it over.

Q: Can you tell us what this letter is?

A: Yes, it's a letter that was given to — it's hand-delivered. We did not bargain — the parties did not bargain on July 14, 2004, so this was —

Q: What was scheduled for July 14th, 2004 if you recall, if anything?

A: I believe that that was a day the union was going to work on its proposals. There was no bargaining schedule or if it was scheduled it was cancelled to allow the parties to work on proposals.

Q: I'm sorry, so you received this letter on July 14th?

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A: Yes, it was delivered to the site and then I think the site faxed it to me. That's how I recall it, but it was delivered on the 14th.

Q: What is this letter's subject matter?

[redacted]

Q: It appears that the information sought was over a five-year period?

A: Yes, her letter — I mean first of all this letter, you know, misstates — again, it continues to misstate what the union misstated at the prior session on the 13th. You look at the first paragraph and Ms. Hostetler writes, "As a result DuPont withdrew its —

JUDGE BOGAS: I want to make sure I have the right letter. The one I have is signed by Mr. Shilling? Is that the same letter that you're — that is Respondent's R-13?

THE WITNESS: That's right, I'm assuming that it's written by Hostetler, but it is signed by Mr. Shilling.

BY MR. SUFLAS:

Q: Please continue, you were referring to the statement of the union' position?

A: The first paragraph, the union writes, "As a result DuPont withdrew its benefit proposal." This is — essentially they're

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saying again what they said at the table on July 13th which is claiming that we withdrew our benefits proposal and that we withdrew BeneFlex. As I testified before at the meeting on the 13th I said "No, this is our benefits proposal. If you don't like this benefits proposal then you must make a counter proposal," but I did not withdraw our benefits proposal and I made it clear that that was still on the table.

So, this letter writes, initially starts off by saying that and it starts off by saying that, you know, since — the letter continues "Since DuPont withdrew its benefits proposals" it says, "the union has to now formulate a benefits proposal for the successor contract," and then it goes on to say, "We need all this information in order to formulate these proposals."

Q: When did the union demand that the information be provided to them?

[redacted]

Q: I think you've already alluded to this, but in terms of the information requested, was it a lot, was it a little?

A: It was ridiculously a lot. I mean, this purports to be an information request seeking information necessary to make a benefits proposal for a bargaining unit in Delaware of about 113, 120 people and it's got what, 11 points and its got a bunch

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of sub-parts and it seeks all sorts of information that's irrelevant to making a bargaining — to making that benefits proposal with respect to that bargaining unit.

Q: When you say it's irrelevant to making a proposal for that bargaining unit, on what do you base that opinion?

A: Well, I mean just logic, but my experience as a bargainer, I mean, I've gotten benefits proposals before and I know very well what it takes to get a benefits proposal from an outside carrier like Blue Cross/Blue Shield.

Q: Thank you.

MR. SUFLAS: I move R-13 into evidence.

JUDGE BOGAS: Counsel for the General Counsel?

MR. CONLEY: No objection.

MS. HOSTETLER: No objection.

JUDGE BOGAS: Respondent's R-13 is received.

(Respondent's Exhibit R-13 received.)

BY MR. SUFLAS:

Q: Denise, let me turn your attention to the next bargaining session which is the 14th session on July 15th of 2004; was the issue of BeneFlex discussed at that meeting?

A: Yes, it was.

Q: Do you recall what was discussed?

A: Yes, I do.

Q: What was discussed?

A: Well, we has more of the same, I guess I started out the

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sessions by saying look, let me, you know, correct the record because essentially I referenced this letter and you know, said that it's very clear that I didn't withdraw the benefits proposal or BeneFlex.

The plant's proposal remained as it was from the beginning, as I had explained it to you on numerous occasions and that was that the plant was proposing to provide BeneFlex to this bargaining unit on the same terms as it provided BeneFlex to everyone else in the company and it wanted to make explicit is right to make changes in and out of contract, then, you know, there was a discussion about the union claim that I had withdrawn the proposal and I again reiterated that I hadn't.

Q: What was the company's position — what position did the company express across the bargaining table as to its right to make out-of-contract BeneFlex changes without this propose language?

A: I think I said earlier and just now, that we wanted to clarify it, we wanted the union's acknowledgement, but we said over and over again, look, we have this right, we simply want to get this right explicit in the contract so we're not going to be in litigation like the Yerkes site in New York or like the Louisville site in Kentucky, we don't want to deal with that and if these contract negotiations continue on for a long period of time, and it looked like they were going to go on for awhile,

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that we wanted to make it clear that this was our right and we wanted both parties to agree to it.

Q: What was the union's response at the table on that day?

A: To that discussion?

Q: Yes?

[redacted]

Q: I'm going to show you what's been marked as Exhibit R-16. Can you tell me what this document is?

(Respondent's Exhibit R-16 identified)

A: This is a letter from me to Mr. Schilling, Mr. Briggs and a copy to Kathleen Hostetler concerning — it concerns R-13.

Q: So, it was in response to the union's request that's R-13?

A: Yes, it was. They had sent me another letter on Sunday, July 18 on the same information request and so I was writing back on that.

Q: Did you provide some of the information requested in R-16?

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A: Yes, what we wrote was — hold on a second. In this letter what I wrote was at the next bargaining session, which would be the next day, July 20th, I would provide the census data that was requested in numbered paragraph 1 of R-13 and I noted that the plant had already provided a lot of that stuff to the union in an earlier information request.

This was information request number 14 in these negotiations and in response to an earlier information request, their 7th information request, we had provided a lot of that information already, but the next day I wrote that I would provide it to them again.

Q: So, in the caption of this letter when you say "This is information request number 14," this was the union's 14th information request?

A: This was their 14th information request in these set-up negotiations.

Q: In your experience as a bargainer is that a lot or a little?

A: Yes, again, it's ridiculously a lot. I mean we were getting information requests on virtually everything, it seemed, that was raised at the table. They were detailed lengthy pages of information requests.

Q: You indicated that to the parties that the next day on July 20th, 2004?

A: That's correct.

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Q: And, you provided some of the information requests at that time?

A: That's right, as I say in the July 19 letter, that I would provide a response to numbered paragraph one of the July 14 information request.

Q: I'm next going to show you what's been marked as Respondent's Exhibit R-17. If you can identify that document for the record, please?

(Respondent's Exhibit R-17 identified)

A: This is my letter of July 21, 2004 to Mr. Schilling, Mr. Briggs and a copy to Kathleen Hostetler and again this letter memorializes that in fact at the bargaining session on the 20th the plant provided the union with the information requested in numbered paragraph one of their July 14 information request. You'll see that attached to R-17 is the information and that's my handwriting at the top of the second page saying one copy handed out, 7-20-04 bargaining session.

Q: Next I'm going to show you what's been marked as Respondent's Exhibit R-18. If you could identify that for the record?

(Respondent's Exhibit R-18 identified)

A: This is a letter dated July 28, 2004 from Mr. Schilling and Mr. Briggs to me essentially following up on Information Request Number 14 and asking for additional information — additional census information is what they called it.

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Q: And this letter is dated July 28th?

A: Correct.

Q: Does the letter indicate the reason why this additional information is being requested?

A: Well, the letter say that this information has "been requested by the health care provider that we are currently in discussions with and is essential to the union in order to formulate a benefits proposal."

Q: What deadline did the union give you to respond to this request?

A: They asked for the information no later than Tuesday, August 3rd, this is the 28th, so they gave us it looks like five or six days with an intervening weekend.

Q: Next I'm going to show you what's been marked as R-19. If you can identify this for the record, please?

(Respondent's Exhibit R-19 identified)

A: All right, this is my letter of July 30, 2004 and it replied to the July 28, 2004 that's been marked R-18. In that letter I provide them with some of the information requested in the July 28 letter and I say we're working on the rest of it.

Q: So, you responded in two days to that request?

A: That's correct, as soon as we could.

Q: Next I'm going to show you what's been marked as R-20. If you could identify that for the record?

(Respondent's Exhibit R-20 identified)

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A: This is a further response to the July 28 letter which is R-18 and that provides the rest of the information that was requested though R-18, so in effect, we answered R-18, the July 28 letter with a letter on the 30th of July and a letter on August 5th, that provided all the information they asked for in R-18.

Q: Next I'm going to show you what's been marked as R-21. Can you identify that?

(Respondent's Exhibit R-21 identified)

A: Yes, this is an August 6 letter from Messrs. Shilling and Briggs and in it, you know, it comes right — so I sent them a letter on August 5th giving them the information they asked for on July 28th and now I get another letter the very next day saying well, they need some more information, they need it to be reformatted and so essentially they're asking for information that we have previously given them, but now they need it reformatted allegedly for their health care provider.

Q: Now, with respect to Respondent's R-18 and Respondent's R-21, these two new union information requests they both indicate that these requests are being made at the behest of a health care provider?

A: Yes, they both say that the union is requesting this — that the information was being requested by a health provider they are working with.

Q: How does the information requested in those two letters

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[1] this date of birth, this gender, eleeteen
[2] **MR. SUFLAS:** Your Honor, I would like to offer
[3] Respondent's R-18, R-19, R-20, R-21, R-22 and R-23 into
[4] evidence.
[5] **MS. HOSTETLER:** I'm sorry, Your Honor, what were those
[6] exhibits again?
[7] **JUDGE BOGAS:** That's R-18 through R-23?
[8] **MR. SUFLAS:** Correct, Your Honor.
[9] **JUDGE BOGAS:** Counsel for the General Counsel?
[10] **MR. CONLEY:** No objection.
[11] **JUDGE BOGAS:** Counsel for the Charging Party?
[12] **MS. HOSTETLER:** No objection, Your Honor, and I also have
[13] a question, I lost track of my —
[14] **JUDGE BOGAS:** Just before you do that, Respondent's R-18,
[15] R-19, R-20, R-21, R-22 and R-23 are received.
[16] (Respondent's R-18, R-19, R-20, R-21, R-22 and R-23 received)
[17] **JUDGE BOGAS:** Go ahead, Ms. Hostetler.
[18] **MS. HOSTETLER:** My question is on R-17, was R-17 offered
[19] and R-16?
[20] **JUDGE BOGAS:** No. R-16 and R-17 were not offered and
[21] received according to my notes.
[22] **MR. SUFLAS:** Yes, I would move R-16 and R-27 into evidence
[23] at this time also.
[24] **JUDGE BOGAS:** Counsel for the General Counsel?
[25] **MR. CONLEY:** No objection.

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[1] **JUDGE BOGAS:** Counsel for the Charging Party?
[2] **MS. HOSTETLER:** No objection.
[3] **JUDGE BOGAS:** R-16 an R-17 are received.
[4] (Respondent's Exhibits R-16 and R-17 received)
[5] **BY MR. SUFLAS:**
[6] **Q:** Now Denise, let me call your attention back to R-22 wherein
[7] you make the statement that aggregate costs coupled with
[8] demographic data previously produced to the union is all that's
[9] needed for a third party to design and cost out a benefits plan;
[10] what was the basis for the company making that statement in that
[11] letter?
[12] **A:** Well, in that letter I know that this is the type of
[13] information that my clients and I have used to get quotes from
[14] third party carriers in other situations, to get a quote from a
[15] third party carrier.
[16] **Q:** Can you give us a specific example not involving this
[17] carrier?
[18] **A:** Not involving this case? I know that I had worked with a
[19] client that — do you want the name of the client; I mean I know
[20] that I've been working — this is 2004, at the end of 2003 we
[21] had — I had worked for the client in collective bargaining
[22] negotiations to present a proposal for a modified health care
[23] plan, that is modifying the plan that the company had then been
[24] giving and made that proposal to the union and I know this is
[25] the information that the client and I provided to the carrier.

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[1] **Q:** With respect to that statement in R-22 that aggregate costs
[2] and claims data coupled with demographic data was sufficient to
[3] price out a plan, were there any subsequent events that
[4] confirmed that opinion in you mind with respect to this
[5] bargaining unit?
[6] **A:** Yes.
[7] **Q:** Could you tell us about this?
[8] **A:** Yes, at my direction someone in my office contacted AON
[9] Consulting, which is a benefits —
[10] **JUDGE BOGAS:** Who is AON Consulting?
[11] **THE WITNESS:** They are a benefits consulting group and we
[12] provided them with —
[13] **MR. CONLEY:** Objection, hearsay.
[14] **MR. SUFLAS:** We can put on live testimony about this if
[15] you want, Your Honor, but it's three questions and —
[16] **JUDGE BOGAS:** I'm going to say this just in general. I
[17] mean, it seems to me there is evidence that your client has been
[18] making an effort to respond to the information requests.
[19] Certainly the testimony is indicating that, but how relevant
[20] that is to this proceeding and how much it is worth it to get
[21] into that and to wrangle about hearsay evidence regarding that
[22] really seems to me, Counsel, to be getting kind of far afield
[23] You started your presentation by talking about what this
[24] case wasn't about; it wasn't about information requests, it
[25] wasn't about bad faith bargaining, it wasn't about impasse, and

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[1] you seem to be getting far afield and is it possible — is it
[2] evidence about these matters.
[3] It does appear your client was responding to these
[4] information requests promptly and fairly thoroughly at least
[5] with respect to some of them, but I just don't know — aside
[6] from making your client look good in general, how important that
[7] is.
[8] **MR. SUFLAS:** Well, that's always important, Your Honor,
[9] but leaving that aside —
[10] **JUDGE BOGAS:** In this case in particular that I think
[11] presents some fairly narrow legal issues, how I certainly would
[12] rule on the first issue is not going to be determined in any way
[13] by how much I like or don't like your client. it's strictly a
[14] legal issue, it's one I'm going to take a hard look at based on
[15] looking at case law on the subject and what the Board said and
[16] hasn't said, but do you feel it's necessary to pursue this line
[17] of questioning with respect to this issue of whether certain
[18] information was sufficient to get a quote from a provider?
[19] **MR. SUFLAS:** Yes, I do, Your Honor, and you've made fair
[20] comment, but let me connect the relevance of this information to
[21] our theories expressed in our opening statement.
[22] These parties know, this union knows that every fall
[23] BeneFlex changes are coming. They're announced, they're
[24] implemented effective 2005. What we are endeavoring to show
[25] with this testimony is that all across the spring and the summer

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this was I believe Rinkel talking, that our proposal will be competitive and it will be cheaper than BeneFlex and you'll have it, you know, next week.

MR. SUFLAS: Thank you. I will withdraw Respondent's Exhibit R-28.

(Respondent's Exhibit R-28 withdrawn)

BY MR. SUFLAS:

Q: Let me turn your attention to the next — I'm sorry, let me turn your attention to the session of September 29, 2004 which was the 22nd session. Do you recall that session?

A: Yes, I do, it was a big session.

Q: What occurred at that — first of all, who was in attendance — who was the union's spokesperson at that session?

A: [illegible]

Q: What occurred at the session on September 29th?

A: On September 29th the union brought in representatives from Blue Cross/Blue Shield of Delaware including Rob Jordon. They proceeded to — the Blue Cross/Blue Shield representatives presented — they made a presentation about potential benefits proposal that the union might be making. The union said specifically this is not our proposal, this is just a

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presentation and then the meeting was turned over to the Blue Cross/Blue Shield representatives essentially and they reviewed I guess what would be their proposal, the Blue Cross/Blue Shield suggested benefits plan.

That covered most of the morning. They talked about — they made a presentation on short-term disability and when we mentioned that that wasn't part of BeneFlex they withdrew that part of it. But, they made a presentation on life insurance, they made a presentation on dental, vision and on health benefits. The Blue Cross/Blue Shield representatives, you know, covered that in some detail.

Q: And, then you indicated that this — how long did the presentation last?

A: It lasted a few hours. The morning part of our negotiation session was taken up with the Blue Cross/Blue Shield presentation.

Q: Did the session continue after the Blue Cross/Blue Shield representatives left?

A: Yes, they had to leave, they had a deadline.

Q: What was the discussion after they departed?

A: We talked about their proposal, management representatives asked questions to the union about the presentation and you know, what the union would be proposing because the union made it very clear that this was not actually their proposal, it was just an information session.

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Q: Did the union give you an indication as to what their thinking was at that time about cost sharing or the cost of this presentation?

A: Yes, they said that whatever the cost of this benefits package was would be shared 70/30 with 70 percent being paid by the plant and 30 percent being paid by the employees because these were all third party plans so there were premiums so they were going to split the premiums 70/30.

Q: Now, let me next ask you to look at Joint Exhibit J-34 if you would, please. Can you tell me what — well, that is an information request from the union September 29, 2004?

A: Yes, it is.

Q: It seeks information regarding upcoming changes for 2005, BeneFlex?

A: That's correct.

Q: At this point on September 29 of 2004 what was the status of the announcement of 2005 BeneFlex changes if you recall?

A: Well, the 2005 BeneFlex changes had not yet been announced.

Q: Do you recall if a date had been set for announcement by now?

A: I know they were presented to everyone on October 11, 2004. I don't recall at this time whether that date had been set. I think it had.

Q: Had the company probably announced that the BeneFlex announcement would be forthcoming?

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A: [illegible]

Q: Next I'm going to show you what has been marked as Respondent's Exhibit R-30. Can you identify Respondent's Exhibit R-30?

(Respondent's Exhibit R-30 identified)

A: Yes, this is an information request for the — by the union for the 2005 monthly COBRA rates for the Edgemoor employees. This was handed out at the meeting on the 29th of September as was the information request that we just talked about.

Q: When the union asked for COBRA rates, what did that mean?

A: What did that mean?

Q: Yes?

A: That's the rate — well, COBRA is a federal law that says that if someone loses benefits, is no longer qualified for health care benefits either because they've been terminated or they've gone to part time status or for certain other what are called qualifying events.

If they lose eligibility, they are allowed to purchase continued coverage under the employer's plan if they were an employee and still eligible so long as they pay essentially the full premium plus two percent.

Q: I'm going to show you what has been marked a R-33. Can you

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tell me what R-33 is?
(Respondent's Exhibit R-33 identified)
A: Yes, these are the 2005 DuPont employee monthly COBRA e-rates which was given to the union.
MR. SUFLAS: I move Respondent's R-30 and R-33 at this time, Your Honor.
JUDGE BOGAS: Counsel for the General Counsel?
MR. CONLEY: No objection.
MS. HOSTETLER: No objection.
JUDGE BOGAS: Respondent's R-30 and R-33 are received.
(Respondent's Exhibits R-30 and R-33 received)
MR. SUFLAS: Thank you.
BY MR. SUFLAS:
Q: Next, I'd like to call your attention to the 23rd session of bargaining, October 6, 2004. Do you recall whether the issue of benefits or BeneFlex was discussed at that session?
A: Yes, I do. It was.
Q: What was discussed?
A: I recall the discussion. We talked a little bit about the union's Blue Cross/Blue Shield presentation from the 29th and, you know, I pointed out that I thought it was going to be more expensive and they had given us rates and it was more expensive. The union took the position that well look, you know, essentially of course it's going to be a little more expensive, DuPont is able to spread the costs throughout the entire company

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and they get economies of scale and so they're able to deliver the benefits perhaps at a slightly lower cost than the Blue Cross/Blue Shield plan could do, so we had just a brief discussion on that topic.
Q: Let me next turn your attention to October 11, 2004; were you personally involved in the announcement of the 2005 BeneFlex changes?
A: No, I was not.
Q: Are you aware of how those changes were announced at the site?
A: Yes, I am.
MR. CONLEY: Objection. It's already part of the stipulation and she wasn't involved.
MR. SUFLAS: Well, we can go off the record, maybe I can address their concerns.
JUDGE BOGAS: Off the record.
(Discussion off the record.)
JUDGE BOGAS: Back on the record. I understand, counsel for the Respondent, that you have a stipulation to propose?
MR. SUFLAS: Yes, Your Honor, the stipulation is that on October 11, 2004 we would amplify paragraph 53 of the stipulated facts, Joint 1-A by adding that Respondent and the union — Respondent met with union representatives first to review the 2005 Beneflex changes and that after reviewing those with the union those changes were then announced more broadly across the

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union and non-union population at Edgemoor.
JUDGE BOGAS: Putting aside for the moment whether that's already a stipulation, do the parties so stipulate, General Counsel?
MR. CONLEY: Yes.
JUDGE BOGAS: And, counsel for the Charging Party?
MS. HOSTETLER: Yes.
JUDGE BOGAS: Thank you.
MR. SUFLAS: Thank you.
BY MR. SUFLAS:
Q: Let me turn your attention next to the 25th session, October 13, 2004. Was the issue of benefits or BeneFlex discussed at that session?
A: I would have to check the notes to — I mean I am pretty sure that it was, but I don't have an independent recollection of what was discussed — what we said.
Q: If the witness could be handed General Counsel's Exhibit GC-14, please? I would ask you to look at the pages date stamped 0441, 0442, 0443.
A: Okay.
Q: Look at those first.
(Witness perusing document)
A: Okay, I looked it over.
Q: Did that refresh your recollection as to whether the issue of benefits and BeneFlex was discussed at this meeting?

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A: Yes, it does.
Q: First, what was discussed — was anything discussed about the union's presentation?
A: Yes, as it says here in the minutes, I asked them, you know, when we were going to get the proposal because we met, now this was October 13th, so it was a couple of week after September 29th when the Blue Cross/Blue Shield had made their presentation and I was asking the union, well, when will we see an actual proposal because they had been very clear to say on the 29th that that was not a proposal.
Q: Did they give you any indication as to whether something would be forthcoming?
A: They said they were working on it. I don't see here and I don't recall that they gave me a specific date, I don't believe they did.
Q: Was there any discussion about involvement of bargaining unit employees for BeneFlex coverage before the 2005 year?
A: Yes, I said at this point BeneFlex enrollment was coming up it was going to run, the notes reflect here from October 15th to November 5th which is roughly what I recall. I told the union look, you know, we don't have a proposal from you guys, we're getting close to BeneFlex enrollment period, it's only open for a certain period of time, why don't you have your members — have the bargaining unit go ahead and enroll, make their elections and then, you know, we'll just continue to negotiate;

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if we end up with an alternative plan, fine, no harm no foul.

If we end up with BeneFlex, you know, they'll already be enrolled and there won't be any problem getting them into the plan if that's where we end up and that seemed to be agreeable to everyone.

Q: Did the union object to that?

A: No.

MR. CONLEY: Your Honor, I object to this line of questioning. This document is already in evidence and to simply recount what is already in evidence I'm not sure I understand where the Respondent is going. We already have stipulated to put this document in the record as an exhibit.

MR. SUFLAS: Well, Tour Honor, we're trying to help you out. This exhibit is probably 25 pages long, it deals with any number of bargaining topics beyond BeneFlex.

MR. CONLEY: But, we've already said that, you know, that it's 19 pages long.

JUDGE BOGAS: Well, in your briefs you can certainly draw my attention to any specific parts of this. It is a fairly — there are some voluminous documents in there. I appreciate it that the parties would direct my attention to points I need to review, but that can be done in a brief without taking everyone's time, just taking my time.

MR. SUFLAS: Very good. But, again, I'm having her testify and I only used this exhibit for purposes of refreshing

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her recollection or at least that was my intent.

THE WITNESS: Good.

JUDGE BOGAS: Is this subject — is counsel for the General Counsel or the Charging Party arguing that this specific area before you is the subject of stipulation already?

MR. CONLEY: It seems redundant, she's just simply testified what's in the document as I understand this.

JUDGE BOGAS: These are the notes, she's testifying from her best recollection now, so I'll permit it. The witness can answer the question, the objection is overruled.

MR. SUFLAS: Thank you, Your Honor.

BY MR. SUFLAS:

Q: Moving on, let me ask you to look at Joint Exhibit J-37, please.

A: Okay, I have it in front of me.

Q: Joint Exhibit J-37 is a letter from Ms. Hostetler to you dated October 14th, 2004, it's covered by the stipulations and Mr. Conley, just to set the context, Your Honor, Mr. Conley has already alluded to this letter as an objection by the union to the proposed 2005 BeneFlex changes.

Did the company respond in writing to this letter?

A: No.

Q: Why not?

A: Well, it was a little bit odd letter to get. I mean I got this letter, it was faxed to me on October 14th, remember now

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[redacted]

MS. HOSTETLER: Your Honor, I'm actually going to object. She's just characterized a statement of fact that is not in the record regarding who the lead negotiator is for the union and whether Kathleen Hostetler is at the table anymore. That's not in the record as an established fact.

JUDGE BOGAS: Well, she was at the bargaining session, she could say if you were there or not. I guess maybe — are you objecting to the term of art the table as opposed —

MS. HOSTETLER: Well, I'm objecting —

JUDGE BOGAS: I was understanding that to mean that you weren't in sessions which is a fact that presumably the witness would know.

MS. HOSTETLER: I'm objecting if it is what she's testifying to that the union pulled one attorney, put another attorney in in any way to delay bargaining because we can either enter into a factual stipulation or put a witness on to explain why there was a change of attorneys at that point in time, that it wasn't meant to —

JUDGE BOGAS: Okay, I wasn't getting any of that. I wasn't understanding any of that to be the subject of this. I thought she was explaining her reaction to this letter and when

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she said that someone else was at the table she meant someone else was attending the bargaining sessions.

I should not be putting words in the witness's mouth, but -

THE WITNESS: I'm happy to testify or you can continue.

JUDGE BOGAS: Maybe it would help to just —

MR. SUFLAS: To allay counsel's fears, we're not alleging — we understand that Ms. Hostetler had some family issues, we're not alleging that, you know, her non-attendance factored into our theory that the union was dragging their feet, so if that addresses the concern, perhaps we could just let it be.

THE WITNESS: I don't know why they switched, I'm telling you —

MS. HOSTETLER: Then the other fact that's not in evidence is that Kathleen Hostetler had withdrawn as the attorney for the union and actually I hadn't so I object to that statement in fact.

JUDGE BOGAS: Are you moving to strike that testimony and if so, on what basis?

MS. HOSTETLER: It's not a fact in evidence.

MR. SUFLAS: Let me go about it, Your Honor, maybe I can set the stage better.

JUDGE BOGAS: Okay, I'm going to strike that part of the answer just relating to the statement that Ms. Hostetler was no longer the lead negotiator for the union.

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MS. HOSTETLER: I appreciate it, Your Honor. That satisfies me.

JUDGE BOGAS: All right.

BY MR. SUFLAS:

Q: And, just so the record is clear, I believe you testified before that as of September 24th Ms. Hostetler was no longer present at the bargaining table, correct?

A: That's correct, she was not at table for the union from September 24 for the rest of the year in the unit sessions that took place after that in 2004.

Q: And, following September 24 was it your testimony that Mr. Runkel became the union's lead bargainer?

A: Runkel was at all the sessions from the middle of September 24th to the end of the year for the union and he acted as the lead bargainer and attorney at those sessions That's all I meant when I testified before. He was there, I saw him, Kathleen was not.

Q: Okay, back to this letter. Let me go back even though I asked you this, but let's go back and start it again. Why is it that the company did not respond in writing to this letter?

A: Okay, I get this letter — I receive this letter from Kathleen Hostetler on October 14th, all right. At that time we had been talking to the union about an alternative benefits plan, the union had already made this Blue Cross/Blue Shield non-proposal, this presentation. I knew that I would be getting

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a Blue Cross/Blue Shield proposal from the union, they said they were working on it and they were going to be providing it to me. We had announced — we, the plant and the company, had announced the changes to Beneflex that would be upcoming in 2005, it had been communicated to the bargaining unit, communicated to the union and no one had said to me, we want to bargain the changes.

In fact, the dialogue at the table was not about the changes, but about a new plan, an alternative plan, so there didn't really seem to be any reason to respond to this letter, it was an odd letter to get in the — because at the time she was not at the table, at the table we were discussing an alternative plan and at the table there was voiced no objections to the changes and no request to bargain, so I got the letter, looked at it, I thought well, we'll see what happens at the table, but this did not appear to be part or relevant to the dialogue that was happening at the table. That's it.

Q: Was the company available to entertain anything the union wanted to say about the 2005 changes?

A: We were at the table a lot. They could have brought it up, they could have said something, absolutely.

Q: And, prior to December 16th of 2004 did the company ever say to the union, we're not going to discuss 2005 Beneflex changes?

A: No.

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Q: Did the union specifically question any of those 2005 changes?

A: No, not at the table, no.

Q: Did they make any proposals specifically directed at modifying any of the particular changes announced for 2005?

A: No.

Q: Did bargaining meetings occur after you received this Joint Exhibit R-38 on October 14th?

A: Yes, of course there were stipulations set at a bunch of other meetings that came after this.

Q: Next let me turn your attention to the 30th bargaining session on November 8, 2004. Do you recall that session?

A: Yes.

Q: What, if anything, occurred with respect to the topic of benefits or BeneFlex at this session?

A: I believe there were a couple more meetings after the October 14 letter from Kathy Hostetler and then on November 8th the union made its alternative benefits proposal, they finally came in and they made a formal proposal, they handed it out and we talked about it.

Q: Let me turn your attention to Joint Exhibit J-38; is that the proposal that the union handed out?

A: Yes.

Q: Is this a part of that?

A: Yes, it is.

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Q: Who made the presentation on behalf of the union?

A: Jim Runkel largely and Mark Schilling I believe also spoke.

Q: With respect to the proposal, was it a comprehensive proposal?

A: Yes, it was. It covered — I mean defining comprehensive, it covered health care, vision, dental, life and a number of other benefits so it was comprehensive in that respect, but it didn't — it needed BeneFlex in order to be accepted.

Q: Why do you say it needed Beneflex in order to be accepted?

A: Because — I mean it was comprehensive in that it dealt with all the benefits the union wanted to continue with their alternative plan, but the vacation buy-back and the financial planning programs contained in BeneFlex, the union wanted to continue in those parts of BeneFlex and then substitute the rest of the Blue Cross/Blue Shield Program for the rest of BeneFlex.

Q: On the vacation buy-back and the financial planning, is that reflected on Joint J-38?

A: Yes, sir it is, you'll see there's two paragraphs to Joint J-38 and that first paragraph is the Blue Cross/Blue Shield or the — and independent carrier part of it and then the second paragraph talks about remaining in BeneFlex for just those two benefits.

Q: What was thee union's proposal on November 8th with respect to the cost of this Blue Cross/Blue Shield proposal?

A: The union proposed the bargaining unit members be

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responsible for 30 percent so they proposed a 70/30 cost share for the premiums of this proposal. Then they went on to say because the rates in the proposal were not guaranteed for more than a year, I believe, there may have been — the life insurance may have been guaranteed for like two years, but the health insurance, dental, vision, were guaranteed for a year so they also made a proposal that if the costs of these benefits increased more than 10 percent more then BeneFlex costs the parties would reopen or could reopen and renegotiate benefits.

MR. SUFLAS: Could we go off the record one minute? I apologize.

JUDGE BOGAS: Off the record.

(Discussion off the record)

JUDGE BOGAS: Back on the record.

BY MR. SUFLAS:

Q: Now, did the company have any comment about the union's proposal?

A: Yes, we discussed it in some detail, we asked questions about it. We reviewed it with them.

Q: Did the company have any specific questions or comments regarding the cost of the proposal?

JUDGE BOGAS: Yes, I mean, we pointed out that the rates for the Blue Cross/Blue Shield proposal, the alternative benefits proposal were still higher — substantially higher, we thought, than the rates for the BeneFlex benefits.

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Q: What was the union's response to that?

A: Well, Mr. Rinkel said, look, we don't think they're substantially higher so he said something like its in the tens of dollars, not the hundreds of dollars per month and we've talked about it with our people, we talked about it with the members of the bargaining unit and, you know, they're prepared to pay more to get this benefit plan.

Q: Now, calling your attention to J-38, the second page, was there any temporal limitations to the Blue Cross/Blue Shield proposal?

A: Yes, you'll see on that second page at the bottom in bold the proposal says "for 1-1-05, effective date all enrollment paperwork must be at BCBSD by 12-15-04."

Q: Now, from the company's perspective how did this proposal on November 8th relate to the proposed 2005 changes to BeneFlex?

A: How did it relate? It didn't relate. I mean I'm not sure what you mean. This is a substitute proposal.

Q: So, from the company's perspective you viewed this to be the union's proposal in lieu of the 2005 BeneFlex changes?

A: [illegible]

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Q: And, from the company's perspective was there anything particular about this proposal that was problematic from the start?

A: Well, I think I said that, you know, it was more costly so we, the plant, thought that people would not want to pay more for a benefit plan that was — I don't think it really was as good as the BeneFlex Plan. It was more costly to the company and to the plant and the plant didn't necessarily want to pay more for benefits.

It required the continuation of part of the BeneFlex to continue to be part of this alternative benefits program which brought us back to the issue of can we make changes in and out of contract and I said, to the union that we — this really didn't get us away from that permissive topic of bargaining.

I asked them what their position was on being able to make changes in and out-of-contract for the vacation buy-back and financial planning program and they said, oh no, we don't think you can do that, that's a permissive topic, we don't want to talk to you about that.

So, it was problematic in that we were kind of back to square one even though they made an alternative proposal.

Q: I apologize, I lost track of this one, so we're out of chronological order, but I'm going to ask you to look at what's been marked as Respondent's Exhibit R-35. Will you please identify Respondent's Exhibit R-35?

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(Respondent's Exhibit R-35 identified)

A: Yes, this is the union's response to the plant's response to the union's July 14 eleven point information request.

Q: With respect to this response, did the union deem any other company's responses to be adequate or satisfactory?

A: No, you go through it. The union seems to have a problem with almost all of the — with all the responses. I mean the most the union would say is in response to number one, which we had given them this detailed demographic information, that we're reviewing the response. Other than that, they seemed to fine fault with every response.

Q: Let me next show you what's been marked as R-37. I want you to tell me what this document is?

(Respondent's Exhibit R-37 identified)

A: Yes, this is the plant's response to R-35.

Q: Thank you. Now, does this exhibit include all the attachments?

A: No, it doesn't, there is about an entire red weld of documents that we provided in addition to this answer.

JUDGE BOGAS: An entire what; I don't understand?

THE WITNESS: An entire red weld, like one of those files, you know a big accordion file full of documents.

MR. SUFLAS: I move R-35 and R-37 into evidence at this time.

JUDGE BOGAS: Counsel for the General Counsel?

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MR. CONLEY: No objection.
MS. HOSTETLER: No objection.
JUDGE BOGAS: Respondent's R-35 and R-37 are received.
(Respondent's R-35 and R-37 received)
BY MR. SUFLAS:
Q: Let me next show you what's been marked as Respondent's Exhibit R-40. Can you tell me what this is?
(Respondent's Exhibit R-40 identified)
A: R-40 is a follow-up response to the November 8 letter that I wrote that's been marked R-37.
Q: So, this is additional information to the union?
A: Yes, it is.
MR. SUFLAS: I move R-40 into evidence.
JUDGE BOGAS: Counsel for the General Counsel?
MR. CONLEY: No objection.
MS. HOSTETLER: No objection.
JUDGE BOGAS: Respondent's R-40 is received.
(Respondent's Exhibit R-40 received)
BY MR. SUFLAS:
Q: Let me next turn your attention to the 31st session on November 16th, 2004. Let me ask you to get before you Joint Exhibits J-39 and J-40.
A: Okay.
Q: Do you recall the session of November 16th?
A: Yes, I do.

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Q: Was the issue of benefits discussed at the November 16 meeting?
A: Yes, it was.
Q: What occurred at the November 16 meeting with respect to benefits?
A: Well, about — towards mid-afternoon, I guess about 3:00 or so, the union withdrew the benefits proposal it has made on November 8th and substituted two alternative proposals; that would be Joint Exhibit J-39 and Joint Exhibit J-40.
Q: Approximately what time did these negotiations start, if you recall?
A: The whole session, it started in the morning.
Q: When did the union tender their offers Joint J-39 nd Joint J-40?
A: About 3:00, I think, mid-afternoon, about 3:00.
Q: Calling your attention to Joint J-39 the second line specifically mentions that the union is withdrawing the health care proposal that it presented on November 8th?
A: That's correct, that's what I said, yes.
Q: What were the proposals that the union made on the 16th with respect to benefits?
A: Well, that's these two proposals, Joint Exhibit J-39 and joint Exhibit J-40.
Q: How were they presented by the union?
A: Jim Runkel presented them, all right, and he said, we're

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withdrawing our prior proposal of November 8th and we're substituting two alternatives. One they called the exploding offer or a one-time offer, that's Joint Exhibit J-39 and the union proposed to accept all the terms of the 2005 BeneFlex — all the 2005 changes.
They would go ahead and accept that if the company — if the plant agreed to withdraw its proposal for the acknowledgement that they could make changes in and out of contract and they gave us about two, three hours to decide on this. They said, this expires, you'll see at the end, it says the proposal expires effective 6:00 on November 16th.
Runkel said look, if you don't take this today, then our proposal will be the second half of my proposal making today and that is the proposal that's been marked Joint Exhibit J-40.
Q: And, that's proposed — Joint Exhibit J-40 is styled as a modification?
A: Yes, hold on a second. Yes, the title on J-39 is union one-time offer 11-16-04. The title on Joint Exhibit J-40 is Union proposal modification 11-16-04. Now, he made them both at the same time, he gave it to me at the same time, he presented them across the table and the second one, the proposal modification, as I told them right then and there, was a regressive proposal. I mean essentially —
Q: How so?
A: Well, essentially what this proposal does is it says that

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instead of splitting the cost 70/30 or the Blue Cross/Blue Shield alternative proposal that the employee would pay whatever they had to pay for BeneFlex and the plant would make up the difference, so it was more costly proposal to the plant and obviously less appealing to the plant then the 11-8 proposal.
Q: What was the company's response?
A: Well, we had the two of them in front of us. We didn't really think we had a whole lot of time to decide on them. We did not accept the one-time offer that day and so by the conclusion of that session the union's only proposal we understood, was this union proposal modification.
Q: Why did the company reject these two proposals?
A: Well, they really didn't have a lot of time to decide on the one-time offer so we didn't accept it that day and it expired. We didn't accept the 11-16-04 union proposal modification because it was more costly, we weren't going to accept it right then and there.
MR. SUFLAS: Your Honor, could we take a short break at this point, we're almost done?
JUDGE BOGAS: I'd like to keep going, this witness has been on the stand for a long time, we can take a break before cross.
MR. SUFLAS: That's fine, Your Honor, very good.
BY MR. SUFLAS:
Q: Let me turn your attention next to the meeting of December

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16th, 2004.

A: I should also amend my answer to the last question which is that this — I neglected to mention that the union proposal modification 11-16-04 still had the idea that it would include the BeneFlex vacation buy-back and the financial planning and that was still an issue for us as well because you know, it got us right back to the changes in the contract issue.

Q: Now, calling your attention to the December 16 session, do you recall that session?

A: Yes, I do.

Q: What was discussed at that session regarding BeneFlex?

A: On December 16th I informed the union that the plant would be implementing the BeneFlex 2005 changes. You know, the parties were not in a position, as I said, at the negotiating session to implement a new plan. There were no more negotiating sessions scheduled for that year. We were already past the deadline for the Blue Cross/Blue Shield plan which was December 15th, people had already registered for BeneFlex — I'm sorry, enrolled and you know, the parties weren't in the position to implement an alternative plan at that point, so we informed them that we were going to go ahead and implement the 2005 changes.

Q: Were there any specific reasons why the parties could not implement an alternative plan at that date?

A: We hadn't agreed n one so I mean, there wasn't an alternative plan to implement and to get the paperwork done. I

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mean, the Blue Cross/Blue Shield proposal itself said the paperwork had to be to Blue Cross/Blue Shield by December 15th so it was very unlikely that we were going to be able to get everybody signed up and taken care of before the end of the year. That was going to be impossible, I don't think anybody really disputed that.

Q: What was the union's response?

A: They said that was an action that would be met with a reaction.

Q: Was there any further discussion on December 16th of the union's Blue Cross/Blue Shield proposal?

[redacted]

Q: Now, let me call your attention to the sessions of January 26, 2005, the 36th session.

A: Yes.

Q: Paragraph 61 of the stipulation states that at that meeting the union presented a package of proposals and that benefits were not addressed. Well, paragraph 61 says what it says. Was there any reference to the Blue Cross/Blue Shield proposal at the session of January 16th?

A: No.

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Q: This package of proposal presented by the union, did the union express what they were trying to accomplish with it?

A: With the package of proposals on the 26th?

Q: Yes?

A: Yes, they said essentially that they were making what they called a package of proposals in an attempt to wrap up the open items — the items that were still open in the contract negotiations.

Q: Approximately how many items remained open at this point in January of 2005?

A: There were about — I think about eight or nine still open items. There has been something like almost 30 tentative agreements on item and maybe there has been a few proposals that had been withdrawn, so that covered the universe of proposals.

Q: Now, there was also a meeting on January 28th, 2005, the 37th session. Was there any further discussion about BeneFlex at that point?

A: About BeneFlex? On the 28th the union made another package of proposals. So we had some of their proposals from the 26th and they made another package designed to wrap up all the open items. On the 28th — with on the 26th or the 28th I asked the union what they wanted to do with benefits because their package of proposals did not include the Blue Cross/Blue Shield benefit proposal that they had made before on any of the prior benefits proposals they had made.

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They said that they were proposing to continue BeneFlex as is from the existing contract, they wanted to continue the same language from the expired contract, I'm sorry. So, in effect, they withdrew their — all their alternative benefits plan proposals.

Q: Now, the stipulations in paragraph 62 refer to the fact that Respondeat prepared a counter-proposal, Joint Exhibit J-42, let me turn your attention to the 38th session on March 11th, 2005. What was the discussion at that point about these packages of proposals which had been exchanged by the parties?

A: At that session the union said hat it intended to vote on the company's — what's been marked as Joint Exhibit J-42, the company's March 10 set of proposals. They wanted to vote on those proposals, but they were not going toot vote on proposal 4 and proposal 9.

Q: What were those?

A: Proposal 4 — numbered proposal 4 was the plant's proposal on BeneFlex as I've discussed before. Proposal 9 was the plant's proposal to ask that the union withdraw this unfair labor practice charge.

Q: Let me turn your attention to Joint Exhibit J-43. Did the company subsequently modify its position with respect to this package of proposals that the parties were discussing back and forth?

A: Yes, that's my letter of March — I'm sorry, Joint Exhibit

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J-43 is my letter of March 21, 2005 to Mark Schilling and James Briggs.

Q: All right, in the stipulation at this point the plant withdrew its proposal on the BeneFlex waiver; is that right?

A: Yes, it did. Absolutely.

Q: And, the stipulation tells us that that package — that that modified package failed ratification, correct?

A: That's what I was informed by the union, yes.

Q: Following the failure of the package of ratification were there subsequent bargaining sessions between the parties?

A: Yes, there were.

Q: Now, in the bargaining that continued after December 16th, did the union ever return to their Blue Cross/Blue Shield proposal?

[illegible]

Q: Has the union ever mentioned the Blue Cross/Blue Shield proposal subsequent to November 16th, 2004?

A: No, they have accepted — it seems to me that they have accepted the 2005 changes.

MR. SUFLAS: Thank you very much. Your witness.

JUDGE BOGAS: Let's take a five-minute break. Off the record.

(Off the record for a five-minute break)

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JUDGE BOGAS: Back on the record.

MR. CONLEY: The parties have had an off-the-record discussion and the Respondent has agreed that it has not attempted to assert that Kathleen Hostetler had at any time withdrawn as counsel for the union.

MR. SUFLAS: So stipulated, Your Honor.

JUDGE BOGAS: Thank you.

JUDGE BOGAS: Ms. Hostetler?

MS. HOSTETLER: The Charging Party stipulates.

JUDGE BOGAS: Off the record.

(Discussion off the record)

JUDGE BOGAS: Back on the record. Mr. Conley?

MR. CONLEY: Thank you.

CROSS EXAMINATION

BY MR. CONLEY:

Q: Ms. Keyser, you testified the BeneFlex Plan is a very comprehensive plan of benefits?

A: Yes, it is.

Q: That nationwide plan is the plan you feel is an excellent plan?

A: It's my understanding from talking to the plant people and even from talking to the union people across the table during these negotiations that it is a very good plan, they acknowledge that.

Q: And, it offers a tremendous amount of different option of

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benefits under the plan through different programs that are part of BeneFlex?

A: It offers a number of different options. I don't know if I would call it a tremendous amount of options. I understood from my clients and from the union that it was a good plan.

Q: And, during 1994 to 2004 the union had never addressed making other offers of BeneFlex Plans in that time period, never need to do so; is that correct?

A: I'm sorry, I don't understand your question; could you ask it again?

Q: Between 1994 and 2004 the union never needed to make any proposals on BeneFlex?

A: It never needed to make proposals on BeneFlex? My understanding from the stipulations that we've put into evidence is that the company made changes each year and that the union did not request to bargain.

Q: So, there wasn't any need for the union to make any proposals on it because it was always something that the company took care of?

A: I don't understand your question, in terms of the need does the — I don't understand what you're asking me.

Q: The company took care of making any proposals an changes to BeneFlex during that period of ten years?

A: I still don't understand what you mean when you say the company took care of making proposals. I know and its stipulated

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in here in the record that the company made annual changes from 1994 to 2004. I'm not going to venture out as to whether there was a need to make additional proposals, I'm telling you what we stipulated to which was that they made annual changes and the union did not request to bargain.

Q: And, as for July 13th then you indicated to the union that they would need to come up with a comparable proposal to BeneFlex; is that correct?

A: On July 13th, 2004 —

Q: Right.

A: — I told the union directly that if they didn't like the BeneFlex proposal then they ought to come up with a counter-proposal, but frankly they should have known that from the beginning. I mean, I don't know why I would have to tell them on the 13th.

MR. CONLEY: I move to strike that part of the response, that's not responsive.

JUDGE BOGAS: The part of the answer that is not responsive is stricken. Please try not to argue with counsel, just answer the questions.

THE WITNESS: Okay.

JUDGE BOGAS: If you don't understand something, just ask for an explanation. This isn't a debate, it's cross examination.

THE WITNESS: Okay.

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[1] **JUDGE BOGAS:** Thank you. Counsel for the Charging Party?
[2] **MS. HOSTETLER:** Yes, I have just a couple questions.
[3] **DIRECT EXAMINATION**
[4] **BY MS. HOSTETLER:**
[5] **Q:** Mark, could you take a look at Respondent's R-35?
[6] **A:** Okay.
[7] **Q:** Who drafted this information request?
[8] **A:** You did, Kathleen Hostetler.
[9] **Q:** Thank you, and then will you take a look at Respondent's
[10] R-46?
[11] **JUDGE BOGAS:** Which one?
[12] **MS. HOSTETLER:** Respondent's R-46.
[13] **THE WITNESS:** I have it.
[14] **BY MS. HOSTETLER:**
[15] **Q:** Do you have R-46?
[16] **A:** Yes.
[17] **Q:** Have you seen this document before today?
[18] **A:** No, I have not.
[19] **Q:** During the time around August 31st, 2004 and subsequently
[20] were you aware that the company has this information from Blue
[21] Cross/Blue Shield?
[22] **A:** No, I was not.
[23] **Q:** One moment. Focusing your time around August 31st, 2004 or
[24] actually subsequent to August 31st, 2004, what if any requests
[25] did Blue Cross make of you regarding additional information from

Page 144

[1] Dupont?
[2] **A:** They continually kept asking me for additional census data
[3] in different format an additional information as we went along.
[4] **Q:** Did that information include the COBRA information?
[5] **A:** That came in September they said they would need the COBRA
[6] rates — 2005 COBRA rates.
[7] **Q:** Can you think of any other information that they requested
[8] that you obtained from DuPont?
[redacted]
[12] **MS. HOSTETLER:** No further questions, thank you.
[13] **JUDGE BOGAS:** Counsel for the Respondent?
[14] **MR. SUFLAS:** Ye,s Your Honor.
[15] **CROSS EXAMINATION**
[16] **BY MR. SUFLAS:**
[17] **Q:** Mr. Schilling, Rob Jordon, who was referenced in
[18] Respondent's R-46, was he the contact person or one of the
[19] contact people that you had at Blue Cross/Blue Shield?
[20] **A:** Yes, he was the main contact person I had at Blue
[21] Cross/Blue Shield.
[22] **Q:** Did you learn at any point that he had also been speaking
[23] to AON about putting together a similar plan?
[24] **A:** I was not aware of that.
[25] **Q:** Now, Ms. Hostetler asked you — I'm sorry, strike that.

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[1] You testified that Blue Cross/Blue Shield asked for COBRA
[2] information from 2005 and that was because your direction to
[3] them was to mirror the BeneFlex Plan; is that right?
[4] **A:** That's correct.
[5] **Q:** And, was that the union's position because the union
[6] membership and the union leadership were generally satisfied
[7] with the level of benefits of BeneFlex?
[8] **A:** I don't think we were dissatisfied with BeneFlex, no.
[9] **Q:** And, another plan could have been priced that would not
[10] have mirrored BeneFlex, correct?
[11] **A:** I could have priced several plans.
[12] **Q:** Now, you testified that you first contacted Blue Cross/Blue
[13] Shield on July 27th, 2004; is that right?
[14] **A:** That's correct.
[15] **Q:** Was that the first time with respect to the 2004
[16] negotiations that anyone on behalf of the union had contacted a
[17] third party insurance carrier to work on a health care proposal?
[18] **A:** I can only speak to approximately 2000 through 2004 because
[19] that's when my time with the union was there, but yes, that was
[20] the first time.
[21] **Q:** And again, just focusing on 2004, is that because, in your
[22] words the union was not satisfied with the BeneFlex Plan
[23] generally in 2004?
[24] **A:** We were given an ultimatum by Ms. Keyser.
[25] **Q:** On July —

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[1] **A:** On July 14th — 13th, 14th, somewhere about there.
[2] **Q:** But, prior to that you didn't look for alternative coverage
[3] because the union members and the union leadership were not
[4] satisfied with benefits?
[5] **A:** That's correct.
[6] **Q:** Were you also not dissatisfied with the way the BeneFlex
[7] Plan has run in terms of annual changes announced by the company
[8] on a corporate-wide basis?
[9] **A:** We hadn't disputed it, no.
[10] **Q:** In your discussions with Blue Cross and Blue Shield did
[11] they indicate to you that the census data was the most important
[12] information that they needed to price a plan?
[13] **A:** They seemed to focus on the census data a lot, although
[14] they did say that they were going to need to see hard claim
[15] information, things of that nature which was also present in our
[16] other information requests.
[17] **Q:** And, the hard claims information that they needed, did they
[18] indicate whether they needed group claims or did they need
[19] individual claims?
[20] **A:** I don't recall the specifics of that.
[21] **Q:** Do you know whether Blue Cross/Blue Shield relied upon the
[22] group claims data and the census data in order to price the
[23] plan; that that was all they looked at?
[24] **A:** They didn't disclose that to me.
[25] **MR. SUFLAS:** Thank you, sir, nothing further.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

E.I. DUPONT DE NEMOURS AND COMPANY	
and	**Case 4-CA-33620**
PAPER, ALLIED-INDUSTRIAL, CHEMICAL AND ENERGY WORKERS INTERNATIONAL UNION (P.A.C.E.) and its LOCAL 2-786, EDGEMOOR, DELAWARE	

INDEX AND DESCRIPTION OF FORMAL DOCUMENTS

General Counsel's..	1(a)	Original Charge (4-CA-33620) filed 1/3/2005
	1(b)	Affidavit of Service of 1(a) dated 1/4/2005
	1(c)	Complaint and Notice of Hearing dated 3/31/2005
	1(d)	Affidavit of Service of 1(c) dated 3/31/2005
	1(e)	Answer to 1(c) rec'd 4/12/2005
	1(f)	Order Rescheduled Hearing to 8/23/2005 dated 6/27/2005
	1(g)	Affidavit of Service of 1(f) dated 6/27/2005
	1(h)	Order Rescheduling Hearing to 9/13/2005 dated 8/4/2005
	1(i)	Affidavit of Service of 1(h) dated 8/4/2005

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GC 1 ✓
EXHIBIT NO. ____ RECEIVED ____ REJECTED ____
CASE NO. 4-CA-33620 CASE NAME E.I. DuPont DeNemours
NO. OF PAGES ____ DATE 9/13/5 REPORTER ____

INTERNET FORM NLRB-501 (11-94)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

FORM EXEMPT UNDER 44 U.S.C. 3512

DO NOT WRITE IN THIS SPACE

Case	Date Filed
4-CA-33620	1-3-05

INSTRUCTIONS:
File an original and 4 copies of this charge with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer	b. Number of Workers Employed
E.I. DUPONT DE NEMOURS-EDGE MOOR PLANT	130

c. Address *(street, city, State, ZIP, Code)*	d. Employer Representative	e. Telephone No. / Fax No.
104 HAY ROAD EDGE MOOR DE 19809	FRANK INGRAHAM, HR	302-761-2247 Fax No. 302-761-2213

f. Type of Establishment *(factory, mine, wholesaler, etc.)*	g. Identify Principal Product or Service
MANUFACTURING	TITANIUM DIOXIDE

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a), subsections (1) and *(list subsections)* (5) AND (1) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices.)*

Since on or about January 1, 2005, and at all times thereafter, during the course of negotiations for a successor contract, E.I. Dupont de Nemours, by its officers, agents and representatives, violated Section 8(a)(5) of the Act when it unilaterally implemented changes to the health benefit plan in effect for unit employees.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
PACE INTERNATIONAL UNION AND ITS LOCAL 2-786

4a. Address *(street and number, city, State, and ZIP Code)*	4b. Telephone No. / Fax No.
2708 CHINCHILLA DRIVE WILMINGTON, DELAWARE 19810	302-588-7855 Fax No. 716-285-4850

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)*
PAPER, ALLIED-INDUSTRIAL, CHEMICAL AND ENERGY WORKERS INTERNAITONAL UNION

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By _____ James L. Briggs, International Representative
(Signature of representative or person making charge) *(Title, if any)*

Address 110 TWENTY-FOURTH ST., NIAGARA FALLS, NY 14303 Fax No. 716-285-4850 716-998-7556 *(Telephone No.)* JANUARY 3, 2005 *Date*

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

COUNSEL'S EXHIBIT

United States Government

NATIONAL LABOR RELATIONS BOARD
Region Four
615 Chestnut Street - Seventh Floor
Philadelphia, PA 19106-4404

Telephone: (215) 597-7601
Fax: (215) 597-7658
Email: Region4@NLRB.GOV

January 4, 2005

E.I. DuPont De Nemours (Edge Moor Plant)
Mr. Frank Ingraham
104 Hay Road
Edge Moor, DE 19809

Re: E.I.DuPont De Nemours (Edge Moor Plant)
Case 4-CA-33620-1

Dear Mr. Ingraham:

A charge has been filed with this office alleging that you have engaged and are engaging in unfair labor practices within the meaning of the National Labor Relations Act, as amended. A copy of the charge is herewith served upon you. Also enclosed is a copy of Form NLRB 4541, pertaining to our investigation and voluntary adjustment procedures, and a memorandum outlining procedures and practices for electronic communications with Regional Offices.

Attention is called to your right, and the right of any party, to be represented by counsel or other representative in any proceedings before the National Labor Relations Board and the Courts. In the event you choose to have a representative appear on your behalf, please have your representative complete Form NLRB 4701 and forward it promptly to this office.

Please be advised that under the Freedom of Information Act, unfair labor practice charges and representation petitions are subject to prompt disclosure to members of the public upon request. In this regard, you may have received a solicitation by organizations or persons who have obtained public information concerning this matter and who seek to represent you before our Agency. You may be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board; their information regarding this matter is only that which must be made available to any member of the public.

Your cooperation with this office is invited so that all facts of the case may be considered. Accordingly, you are requested to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge. However, the submission of a position letter, or memorandum, or the submission of affidavits not taken by a Board Agent does not constitute full and complete cooperation. Full cooperation consists of permitting the assigned Board Agent to take sworn affidavits from relevant witnesses. Absent your willingness to submit such evidence, the Regional Office will decide the merits of this matter on the evidence available.

Please be advised that evidence and statements of position submitted by the parties will be used by the Agency without qualification or condition. If conditions are incorporated into position statements or evidence submitted during the investigation, they will be disregarded and such position statements or evidence will be considered in the investigation and may be introduced into the record in the event the matter is litigated.

All communications and submissions should be made to the Board Agent indicated below.

Very truly yours,

Dorothy L. Moore-Duncan

DOROTHY L. MOORE-DUNCAN
Regional Director

Case assigned to: Devin Grosh
Telephone Number: (215)597-8468
Email: Devin.Grosh@nlrb.gov

cc:

Paper, Allied-Industrial, Chemical and Energy
Workers International Union Local 2-786
2708 Chinchilla Drive
Wilmington, DE 19810

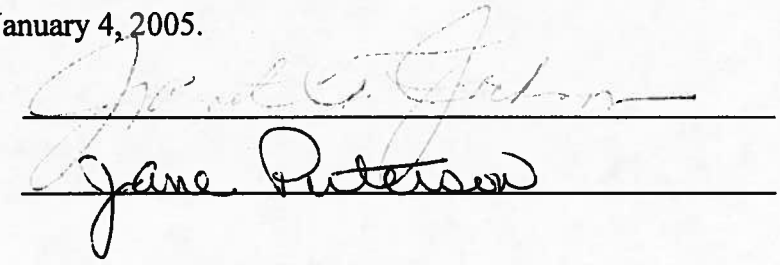
Paper, Allied-Industrial and Energy Workers
International Union
Kathleen Hostetler, Esquire
2236 Ash Street
Denver, CO 80207

Mr. James L. Briggs
110 Twenty-Fourth Street
Niagara Falls, NY 14303

DLMD/jtj

I certify that I served the above referred to charge this day by postpaid first class mail on the addressee(s) named above, together with a transmittal letter to which this is a true copy.

Subscribed and sworn before me on January 4, 2005.



UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

E.I. DUPONT DE NEMOURS AND COMPANY

and

Case 4-CA-33620

PAPER, ALLIED-INDUSTRIAL, CHEMICAL AND ENERGY WORKERS INTERNATIONAL UNION (P.A.C.E.) and its LOCAL 2-786, EDGEMOOR, DELAWARE

COMPLAINT AND NOTICE OF HEARING

Paper, Allied-Industrial, Chemical And Energy Workers International Union (P.A.C.E.) and its Local 2-786, Edge Moor, Delaware, herein collectively PACE and Local 2-786, respectively and herein also collectively called the Union, have charged that E.I. DuPont de Nemours and Company, herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Section 151 *et seq.*, herein called the Act. Based thereon, the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, issues this Complaint and Notice of Hearing and alleges as follows:

1. The charge in this proceeding was filed by the Union on January 3, 2005, and a copy was served by first class mail on Respondent on January 4, 2005.

2. (a) At all material times, Respondent, a Delaware corporation with facilities throughout the United States, including one in Edge Moor, Delaware, herein called the Edge Moor Plant, has been engaged in the production of titanium oxide and ferric chloride.

(b) During the past year, Respondent, in conducting its business operations described above in subparagraph (a), sold and shipped goods valued in excess of $50,000 directly to points outside the State of Delaware.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

3. (a) At all material times, PACE has been a labor organization within the meaning of Section 2(5) of the Act.

(b) At all material times, Local 2-786 has been a labor organization within the meaning of Section 2(5) of the Act.

4. (a) At all material times, Frank Ingraham has been a Human Resources Consultant for Respondent and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

5. (a) The following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees of the Edge Moor Plant with the exception of the Administrative Secretary to the Plant Manager, Human Resources Assistant, Technologists (Training, Planning, DCS), Work Leader, Nurses, salary role employees exempt under the Fair Labor Standards Act, and supervisory employees with the authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action.

(b) At all material times, the Union has been the designated exclusive collective bargaining representative of the Unit and the Union has been recognized as the representative by Respondent. This recognition was most recently embodied in a collective bargaining agreement, effective by its terms from June 1, 2000 to May 31, 2003, and automatically renewed for the period June 1, 2003 to May 31, 2004.

(c) At all material times since at least June 1, 2003, based on Section 9(a) of the Act, the Union has been the exclusive collective bargaining representative of the Unit.

6. (a) On or about October 11, 2004, Respondent announced that, effective January 1, 2005, its Beneflex Plan, providing health insurance benefits, dental, vision and financial planning benefits for Unit employees, would change, and that the employees' costs for these benefits would increase.

(b) The subjects set forth above in subparagraph (a) relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purpose of collective bargaining.

(c) On or about October 14, 2004, the Union requested to bargain with Respondent concerning the changes referred to above in subparagraph (a).

(d) On or about December 16, 2004, Respondent notified the Union that it would not bargain concerning the changed terms and conditions of employment referred to above in subparagraph (a), and, on or about January 1, 2005, Respondent implemented the changes.

(e) Respondent engaged in the conduct described above in subparagraph (a) without having afforded the Union an opportunity to bargain with Respondent concerning these changes.

7. By the conduct described above in paragraph 6, Respondent has been failing and refusing to bargain with the exclusive collective bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

8. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

NOTICE OF HEARING

PLEASE TAKE NOTICE that on **July 12, 2005**, at 10:00 a.m., and on consecutive days thereafter, a hearing will be conducted in a hearing room of the National Labor Relations Board, One Independence Mall, 615 Chestnut Street, 7th Floor, Philadelphia, Pennsylvania. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this Complaint. The procedures to be followed at the hearing are described in the attached Form NLRB–4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB–4338.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the Complaint. The answer must be received by this office on or before **April 14, 2005**. Respondent shall file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties. The answer may not be filed by facsimile transmission. If no answer is filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Complaint are true.

Signed at Philadelphia, Pennsylvania this 31st day of March, 2005.

DOROTHY L. MOORE–DUNCAN
Regional Director, Fourth Region
National Labor Relations Board

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

E. I. DUPONT DE NEMOURS AND COMPANY and PAPER, ALLIED-INDUSTRIAL, CHEMICAL AND ENERGY WORKERS INTERNATIONAL UNION (P.A.C.E.), and its LOCAL 2-786, EDGEMOOR, DELAWARE	Case 4–CA-33620 Date of Mailing: March 31, 2005

AFFIDAVIT OF SERVICE OF: COMPLAINT AND NOTICE OF HEARING

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document by post-paid certified mail upon the following persons, addressed to them at the following addresses:

Mr. Frank Ingraham, E. I. DuPont DeNemours (Edge Moor Plant), 104 Hay Road, Edge Moor, DE 19809 (C. 7002 2410 0003 2714 2203 RRR)

Denise M. Keyser, Esquire, Ballard, Spahr, Andrews & Ingersoll, LLP, Plaza 1000, Suite 500, Main Street, Voorhees, NJ 08043-4636 (C. 7002 2410 0003 2714 2210 RRR)

Paper, Allied-Industrial, Chemical and Energy Workers International Union, Local 2-786, 2708 Chinchilla Drive, Wilmington, DE 19810 (C. 7002 2410 0003 2714 2227)

Kathleen Hostetler, Esquire, Paper, Allied-Industrial, Chemical and Energy Workers International Union, 2236 Ash Street, Denver, CO 80207 (C. 7002 2410 0003 2714 2234)

Mr. James L. Briggs, 110 Twenty-Fourth Street, Niagara Falls, NY 14303 (C. 7002 2410 0003 2714 2241)

Subscribed and sworn to before me this **31st day of March, 2005**	Designated Agent /s/ Renai J. Dunmyer **NATIONAL LABOR RELATIONS BOARD**

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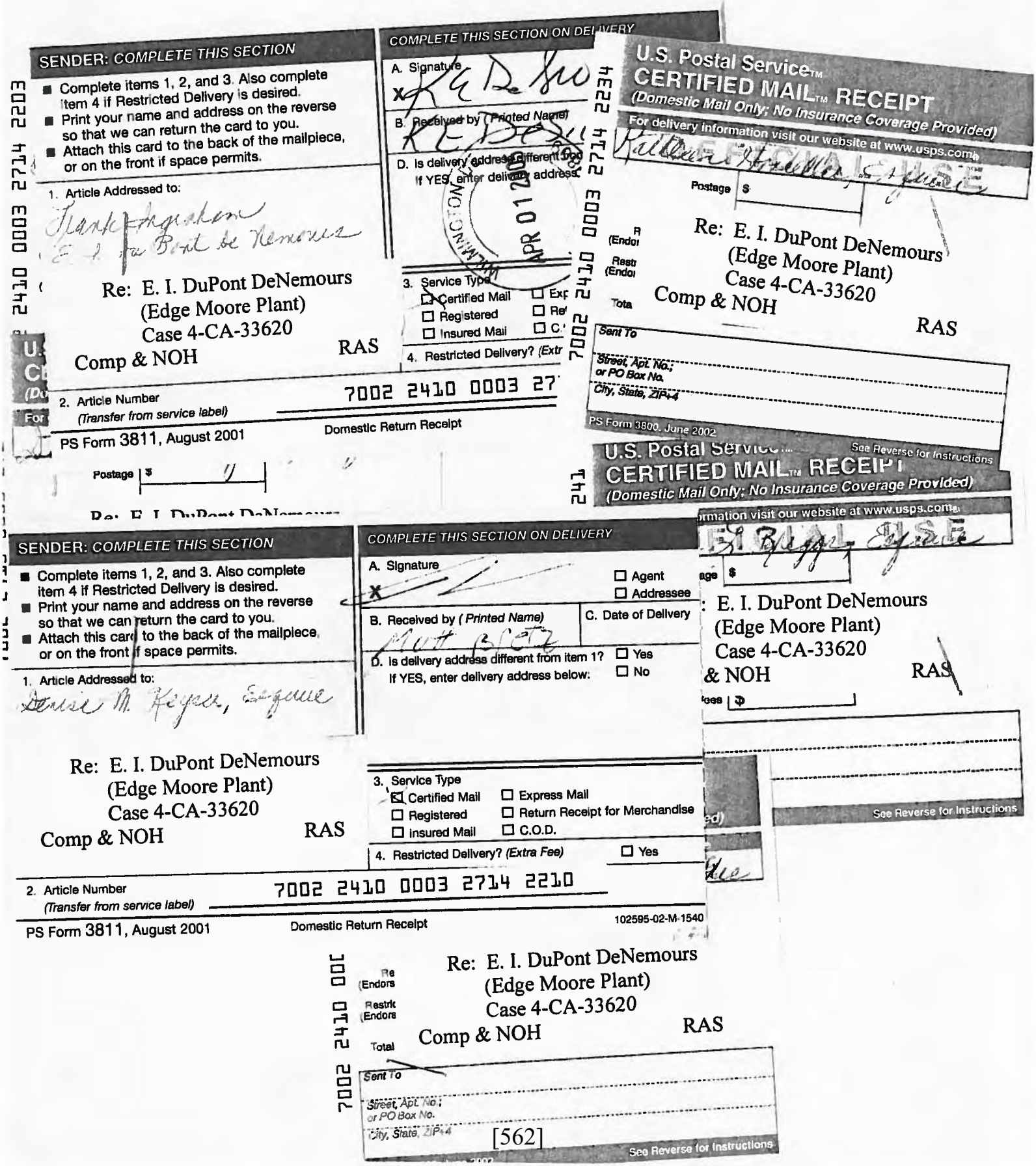

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Frank Ingraham
E. I. DuPont DeNemours

Re: E. I. DuPont DeNemours
(Edge Moore Plant)
Case 4-CA-33620
Comp & NOH RAS

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Case 4-CA-33620
Comp & NOH RAS

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1. Article Addressed to:

Denise M. Keyes, Esquire

Re: E. I. DuPont DeNemours
(Edge Moore Plant)
Case 4-CA-33620
Comp & NOH RAS

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Case 4-CA-33620
Comp & NOH RAS

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City, State, ZIP+4

See Reverse for Instructions

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Re: E. I. DuPont DeNemours
(Edge Moore Plant)
Case 4-CA-33620
Comp & NOH RAS

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LAW OFFICES
BALLARD SPAHR ANDREWS & INGERSOLL, LLP
A PENNSYLVANIA LIMITED LIABILITY PARTNERSHIP
PLAZA 1000 - SUITE 500
MAIN STREET
VOORHEES, NEW JERSEY 08043-4636
856-761-3400
FAX: 856-761-1020
WWW.BALLARDSPAHR.COM

PHILADELPHIA, PA
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DENVER, CO
SALT LAKE CITY, UT
WASHINGTON, DC
WILMINGTON, DE

PARTNER RESPONSIBLE FOR
VOORHEES, NJ PRACTICE
BENJAMIN A. LEVIN

DENISE M. KEYSER
DIRECT DIAL: 856-761-3442
PERSONAL FAX: 856-761-9036
KEYSERD@BALLARDSPAHR.COM

April 12, 2005

By Hand Delivery

Dorothy Moore-Duncan
National Labor Relations Board
Region Four
One Independence Mall
615 Chestnut Street, 7th Floor
Philadelphia, PA 19106

Re: E.I. DuPont de Nemours and Company v. Paper, Allied-Industrial, Chemical and Energy Workers International Union (P.A.C.E.) and its Local 20786, Edge Moor, Delaware; Case No. 4-CA-33620

Dear Ms. Moore-Duncan:

Enclosed for filing is an original and four copies of Respondent's Answer to the Complaint in the above captioned matter. Copies have been served as indicated on the attached Certificate of Service.

Very truly yours,

Denise M. Keyser

DMK/kmr
Enclosure

cc: Kathleen Hostetler, Esquire
Mark A. Schilling
James L. Briggs
Laura Huggett Esquire
Frank B. Ingraham, Jr., SPHR

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

E. I. DUPONT DE NEMOURS AND COMPANY

and

Case 4-CA-33620

PAPER, ALLIED-INDUSTRIAL, CHEMICAL AND ENERGY WORKERS INTERNATIONAL UNION (P.A.C.E.) and its LOCAL 2-786, EDGEMOOR, DELAWARE

ANSWER TO COMPLAINT

Respondent, E.I. DuPont de Nemours and Company ("Respondent"), by its attorneys, Ballard Spahr Andrews & Ingersoll, LLP, responds as follows to the allegations of the Complaint herein:

1. It is admitted that Respondent was served with a copy of the Complaint on or about January 4, 2005, by First Class Mail; Respondent is without sufficient knowledge to admit or deny the balance of the allegations contained in paragraph 1 of the Complaint.

2. (a) Admitted.

(b) Admitted.

(c) Admitted.

3. (a) Admitted.

(b) Admitted

4. Denied. The correct title of Frank Ingraham, Jr. is "Human Resource Consultant." The balance of the allegations in paragraph 4 are denied.

5. (a) Admitted.

(b) Admitted.

(c) Admitted.

6. (a) Admitted in part; denied in part. Admitted only that on or about October 11, 2004, Respondent informed the Charging Party of certain potential changes to its BeneFlex Flexible Benefits Plan ("BeneFlex"). The balance of the allegations contained in paragraph 6(a) are denied.

(b) Denied; Respondent had no legal obligation to bargain with Charging Party regarding changes to BeneFlex.

(c) Denied.

(d) Admitted only that Respondent informed the Union on or about December 16, 2004 that certain changes to BeneFlex would be implemented on January 1, 2005, and that, on January 1, 2005, Respondent implemented such changes. The balance of the allegations contained in paragraph 6(d) are denied.

(e) Denied.

7. Denied.

8. Denied.

9. Respondent denies each and every other allegation not otherwise answered above.

WHEREFORE, Respondent, E.I. DuPont de Nemours and Company, respectfully requests that the Complaint be dismissed in its entirety.

Respectfully submitted,

Denise M. Keyser, Esquire
Ballard Spahr Andrews & Ingersoll, LLP
Attorneys for E.I. DuPont de Nemours & Company
Plaza 1000, Suite 500
Main Street
Voorhees, NJ 08043
Telephone: 856-761-3400

Laura H. Huggett, Esquire
E.I. DuPont de Nemours & Co., Inc.
1007 Market Street
D. 7147
Wilmington, DE 19898
Telephone: 302-773-3421

Dated: April 12, 2005

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Respondent's Answer to the Complaint in Case No. 4-CA-33620 was sent by U.S. First Class Mail on April 12, 2005 to:

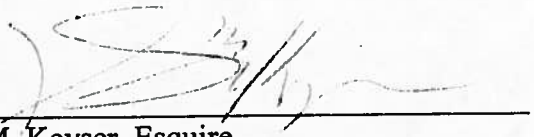
Kathleen Hostetler, Esquire
2236 Ash Street
Denver, CO 80207

Mark A. Schilling
President
PACE Local 2-786
2708 Chinchilla Drive
Wilmington, DE 19810

James L. Briggs
P.A.C.E. International Representative
Region 1
1069 Upper Mountain Road
Lewistown, NY 14092

Laura Huggett, Esquire
E.I. du Pont de Nemours and Company
1007 Market Street
D-7147
Wilmington, DE 19898

Frank B. Ingraham, Jr., SPHR
Human Resource Consultant
DuPont Titanium Technologies
Edge Moor Plant
104 Hay Road
Edgemoor, DE 19809-3596



Denise M. Keyser, Esquire
Ballard Spahr Andrews & Ingersoll, LLP
Attorneys for E.I. DuPont de Nemours & Company
Plaza 1000, Suite 500
Main Street
Voorhees, NJ 08043
Telephone: 856-761-3400

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

E. I. DUPONT DE NEMOURS AND COMPANY

and

Case 4-CA-33620

PAPER, ALLIED-INDUSTRIAL, CHEMICAL AND ENERGY WORKERS INTERNATIONAL UNION (P.A.C.E.) and its LOCAL 2-786, EDGEMOOR, DELAWARE

ORDER RESCHEDULING HEARING

IT IS ORDERED that the hearing in the above-captioned matter be, and the same hereby is, rescheduled from July 12, 2005 at 10:00 a.m. to August 23, 2005 at 10:00 a.m. and on consecutive days thereafter, in a hearing room of the National Labor Relations Board, One Independence Mall, 615 Chestnut Street, 7th Floor, Philadelphia, Pennsylvania.

Signed at Philadelphia, Pennsylvania this 27th day of June, 2005.

Dorothy L. Moore-Duncan

DOROTHY L. MOORE-DUNCAN
Regional Director, Fourth Region
National Labor Relations Board

(f)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

E. I. DUPONT DE NEMOURS and PAPER, ALLIED-INDUSTRIAL, CHEMICAL AND ENERGY WORKERS INTERNATIONAL UNION, LOCAL 2-786	Case 4–CA-33620 Date of Mailing: June 27, 2005

AFFIDAVIT OF SERVICE OF: ORDER RESCHEDULING HEARING

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document by post-paid first class mail upon the following persons, addressed to them at the following addresses:

Mr. Frank Ingraham, E. I. DuPont DeNemours (Edge Moor Plant), 104 Hay Road, Edge Moor, DE 19809

Denise M. Keyser, Esquire, Ballard, Spahr, Andrews & Ingersoll, LLP, Plaza 1000, Suite 500, Main Street, Voorhees, NJ 08043-4636

Paper, Allied-Industrial, Chemical and Energy Workers International Union, Local 2-786, 2708 Chinchilla Drive, Wilmington, DE 19810

Kathleen Hostetler, Esquire, Paper, Allied-Industrial, Chemical and Energy Workers International Union, 2236 Ash Street, Denver, CO 80207

Mr. James L. Briggs, 110 Twenty-Fourth Street, Niagara Falls, NY 14303

Subscribed and sworn to before me this **27th day of June, 2005**	Designated Agent /s/ Renai J. Dunmyer **NATIONAL LABOR RELATIONS BOARD**

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UNITED STATES OF AMERICA
BEFORE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

E.I. DUPONT DE NEMOURS AND COMPANY

and

Case 4-CA-33620

PAPER, ALLIED-INDUSTRIAL, CHEMICAL AND ENERGY WORKERS INTERNATIONAL UNION (P.A.C.E.) and its LOCAL 2-786, EDGEMOOR, DELAWARE

ORDER RESCHEDULING HEARING

IT IS ORDERED that the hearing in the above-captioned matter be, and the same hereby is, rescheduled from August 23, 2005 at 10:00 a.m. to September 13, 2005 at 10:00 a.m., and on consecutive days thereafter, in a hearing room of the National Labor Relations Board, One Independence Mall, 615 Chestnut Street, 7th Floor, Philadelphia, Pennsylvania.

Signed at Philadelphia, Pennsylvania this 4th day of August, 2005.

DANIEL E. HALEVY
Acting Regional Director, Fourth Region
National Labor Relations Board

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

E. I. DUPONT DE NEMOURS and PAPER, ALLIED-INDUSTRIAL, CHEMICAL AND ENERGY WORKERS INTERNATIONAL UNION, LOCAL 2-786	Case 4–CA-33620 Date of Mailing: August 4, 2005

AFFIDAVIT OF SERVICE OF: ORDER RESCHEDULING HEARING

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document by post-paid first class mail upon the following persons, addressed to them at the following addresses:

Mr. Frank Ingraham, E. I. DuPont DeNemours (Edge Moor Plant), 104 Hay Road, Edge Moor, DE 19809

Denise M. Keyser, Esquire, Ballard, Spahr, Andrews & Ingersoll, LLP, Plaza 1000, Suite 500, Main Street, Voorhees, NJ 08043-4636

Paper, Allied-Industrial, Chemical and Energy Workers International Union, Local 2-786, 2708 Chinchilla Drive, Wilmington, DE 19810

Kathleen Hostetler, Esquire, Paper, Allied-Industrial, Chemical and Energy Workers International Union, 2236 Ash Street, Denver, CO 80207

Mr. James L. Briggs, 110 Twenty-Fourth Street, Niagara Falls, NY 14303

Subscribed and sworn to before me this **4th day of August, 2005**	Designated Agent /s/ James F. Kaminski **NATIONAL LABOR RELATIONS BOARD**

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Proposed: May 26, 2004

Non-Economic Proposals Of

E.I. duPont de Nemours & Company, Inc.
(On Behalf Of Its Edge Moor Plant, Edgemoor, Delaware)

To The

Paper, Allied – Industrial, Chemical Aud Energy-Workers International Union (PACE)
And Its Local 2-786

The following is a summary of the Plant's initial proposals for a revised Collective Bargaining Agreement ("CBA") between the Plant, and PACE and Local 2-786 (collectively, the "Union").

I. SUPPLEMENTAL AGREEMENTS

For ease of reference, the Plant proposes to consolidate into the CBA booklet those Supplemental Agreements to be retained by the Parties.

A. **Supplemental Agreement No. 1** – the Transformation Process (June 1, 2000): Delete/expired. See Plant's previously distributed proposal, reprinted below:

> The Plant proposes to delete Supplemental Agreement Number 1 (Supplemental Agreement Regarding the Transformation Process) and proposes the following language as a new Section 7 to Article IV:
>
> Without otherwise limiting Section 3 above, new or increased subcontracting to third parties, beyond that in place as of the effective date of this Collective Bargaining Agreement, shall not be the sole cause of the involuntary termination of employment of any employee employed at the Plant as of May 31, 2004 (as listed on the seniority roster contained in Exhibit A hereto), although such subcontracting may result in, among other things, the involuntary transfer of employee(s) among shifts and/or classifications, and changes in job duties and classifications. This provision shall not affect the management rights reserved herein, including without limitation, the Plant's right to terminate employees involuntarily due to technological developments or improvements, lack of work, elimination of jobs, equipment shut down, just cause, loss of product line, or for any other reason not expressly prohibited herein.

B. **Supplemental Agreement No. 2** – Safety Issues (June 1, 2000):

1. Exhibit A – Life Saving Rules: Delete (and move to "Tipster").

2. Exhibit B – Edge Moor Tipster: Delete (and move Section 2 and 3 to "Tipster").

3. Exhibit C – Safety Coaching: Delete

C. **Supplemental Agreement No. 3** – Union Business (June 1, 2000): Retain and add to CBA with clarification as outlined in John Pietrantonio's September 30, 2002 letter to Mark Schilling reflecting the Parties' agreement that only Union Officers and Representatives will be granted time off without pay to conduct Union business off-plant and, further, the Officers and Representatives entitled to this privilege are as follows:

1. Officers: President; Vice President; Secretary and Treasurer.

2. Representatives: E & I Representative; Plant Maintenance Representative; R & D Control Lab and Shipping Representative; Administrative Assistant Representative; "A" Shift Representative; "B" Shift Representative; "C" Shift Representative and "D" Shift Representative.

D. **Supplemental Agreement No. 4** – Bump and Bid Procedure (June 1, 2000):

1. Retain and move to the CBA booklet's Article X ("Seniority") with the following revisions:

a. Delete third bullet under "Bid Procedure" and replace with: "An employee who bids on this job and is the most senior qualified applicant must go to this job when so requested by Management."

b. Delete bullets numbers 4-8 and replace with language beginning the Lock In Period when the bid is accepted, plus one year from assuming the job's full responsibilities.

c. Delete "Release of Employees" and replace with: "The successful bidder will receive the rate of the new job upon moving to that job."

d. Delete last sentence of last bullet point under "New Jobs."

E. **Supplemental Agreement No. 5** – Line Break Procedure (March 10, 2000):

1. Delete (and move to "Tipster").

F. **Supplemental Agreement No. 6** - Vessel Entry Confined Space Procedure and Permits Safety Rule (April 26, 2001):

1. Delete (and move to "Tipster").

G. **Supplemental Agreement No. 7** – Policies & Procedures (Various Dates):

1. Grievance Forms ("Grievance Report" and "Grievance Timeline") (February 26, 2002): These will be retained and added as an appendix to the CBA booklet. They will be required for all grievances filed.

2. "Progressive Discipline" (April 16, 2002): Retain and add to the CBA booklet. Additionally add "gambling" under the listing of "serious acts of misconduct."

3. Make Up Time for Personal Reasons (October 2, 2000): Retain and move to CBA booklet.

4. Make Up Time for Missed Overtime or Missed Call-in: Retain and move to CBA booklet.

5. Overtime – Reassignment of Employees (October 2, 2000): Delete.

6. Consecutive Hours of Work – 16 Hour Rule (October 2, 2000): Retain and add to CBA booklet.

7. Overtime – Maintenance Trainees (October 2, 2000): Retain and add to CBA booklet.

8. Substance Use/Abuse Procedure (October 2, 2000): Retain and add to the CBA booklet with change noted on first page of Policy.

9. Clarification Regarding Union Notifications (June 23, 2000): Delete.

10. Short Vacations (October 2, 2000): Retain and add to CBA booklet.

H. **Supplemental Agreement No. 8** – "Performance-Based Compensation for Edge Moor" (June 1, 2000): Retain and add to CBA booklet.

II. THE COLLECTIVE BARGAINING AGREEMENT BOOKLET

A. **Article XII: "Holiday Pay"**

1. Clarify and revise Section 1 to reflect the Arbitrator's ruling in American Arbitration Association case no. 14-300-01798-00 ("Holiday Pay for Shift Employees") and the Parties' agreement as memorialized in the letter of Frank Ingraham to Mark Schilling dated April 16, 2002. Such changes will also include deleting the phrase "by all employees regularly scheduled to work on a Monday through Friday basis" in the paragraph running from

page 42 to the top of page 43 in the Collective Bargaining Agreement booklet.

B. **Article XIII: "Wages"**

1. Revise call-in pay procedure described in Section 4(a) consistent with the Plant's need for greater flexibility and efficiency. Section 4(a) should be deleted and replaced with language providing that call-in pay will be a *minimum* payment and that employees will receive straight time call-in pay or pay for all hours worked, whichever is greater, whenever called in on a day not scheduled to work or before the start of a shift; employees "held over" beyond the end of the shift, consistent with current practice, will not receive "call-in" pay, nor will they receive call-in pay for scheduled overtime.

C. **Article XIV: "Miscellaneous Provisions"**

1. Eliminate reference to "Stores classification" in Section 3 ("Clothing Allowance") because that classification has been eliminated.

2. Eliminate reference to "Plant's 373 Message System" in Section 5(b) because that system has been eliminated.

3. Plant provided physicals: Eliminate Plant-provided annual physical examinations for all employees except those who are in or enter "surveillance programs" or as required by law.

D. **Article IX: "Industrial Relations Plans and Practices."** Preserve and clarify Management's right to apply Company-wide annual changes to Beneflex to Edge Moor participants both during the CBA and during any "open contract" period until a new Agreement is reached between the Parties.

E. All Side Letters and Supplemental Agreements not expressly retained and added to the CBA booklet are expired and terminated.

III. TERM OF COLLECTIVE BARGAINING AGREEMENT

No proposals to be made at this time; proposal dependant upon progress of negotiations and agreements on other issues.

The Plant reserves the right to modify and/or add to these proposals as negotiations progress.

PAPER, ALLIED-INDUSTRIAL, CHEMICAL and ENERGY
WORKERS INTL. UNION
PACE LOCAL 2-786
P. O. Box 9634
Edge Moor, DE 19809

July 14, 2004

HAND DELIVERED

Denise M. Keyser, Esq.
Ballard Spahr Andrews & Ingersoll, LLP
Plaza 1000-Suite 500
Voorhees, New Jersey 08043-4636

RE: E.I DuPont de Nemours and Co., Inc. and PACE, Local 2-786

Dear Ms. Keyser:

During negotiations yesterday, you stated that DuPont would not agree to offer its Beneflex plan at this site, unless and until the Union agreed to DuPont's proposal to extend the right to modify benefits to the open contract period. The Union stated that it was not interested in permitting DuPont to modify benefits during the open contract period. As a result, DuPont withdrew its benefit proposal. Now, the Union must formulate benefit proposals for the successor contract.

In order for the Union to formulate these proposals, the following information is necessary:

1. Please provide the demographics of the bargaining unit. Specifically, please provide the name, birth date and year, and gender of each bargaining unit employee at the Edge Moor facility.
2. Please provide the hard claims paid for the last 5 years for **each** bargaining unit employee at the Edge Moor facility for **each** of the following benefits:
   a. Medical;
   b. Dental;
   c. Vision;
   d. Prescription;
   e. Employee Life Insurance;
   f. Dependent Life Insurance;
   g. Accidental Death Insurance.

3. Please provide all claims reports or utilization reports of any kind (including but not limited to a prescription drug provider, claims processor, or dental provider) for the Edge Moor site for the last five years.
4. Please provide all Beneflex Plan records maintained for the Edge Moor location.
5. For each Beneflex Plan year for the last 5 years through the present date, please identify the dollar amount of all benefit claims paid by the Beneflex Plan. Please provide the same information for the Edge Moor Plant only.
6. For each Beneflex Plan year 1998 through 2003, please identify the dollar amount of the following expenses for (i) the Edge Moor Plant only and (ii) also for the entire Plan:
    a. Benefit payments made directly to either participants or beneficiaries pursuant to the Plan.
    b. Payments made to insurance carriers or other vendors for the provision of benefits under the Plan.
    c. Salaries or other allowances for personnel performing services for the Plan.
    d. Accounting fees related to Plan operations or administration.
    e. Actuarial fees related to Plan operations or administration.
    f. Contract administrator fees for services related to the Plan.
    g. Legal fees for services related to the Plan.
    h. Other Plan administrative expenses not identified above (please identify and provide amount).
7. For each Beneflex Plan year 1998 through 2003, please identify the dollar amount of the following expenses for (i) the Edge Moor Plant only and (ii) also for the entire Beneflex Plan:
    a. Benefit payments made directly to either participants or beneficiaries pursuant to the Plan.
    b. Payments made to insurance carriers or other vendors for the provision of benefits under the Plan.
    c. Salaries or other allowances for personnel performing services for the Plan.
    d. Accounting fees related to Plan operations or administration.
    e. Actuarial fees related to Plan operations or administration.
    f. Contract administrator fees for services related to the Plan.
    g. Legal fees for services related to the Plan.
    h. Other Plan administrative expenses not identified above (please identify and provide amount).
8. For each Beneflex Plan year 1998 through 2003, please identify the dollar amount of the costs referred to in Item 7 that was paid by DuPont versus the dollar amount that was paid by employees represented by the Union at the Edge Moor Plant.
9. Please identify each item that is included in calculating the cost referred to in Item 7 for each year, 1998 through 2003 and provide the corresponding dollar amount of that item.
10. For each Plan year 1998 through 2003, please identify and describe the assumptions (including actuarial assumptions, medical inflation trend factors,

industry standards) used to determine premiums, co-payments or deductibles for each of the benefit plans offered by the Plan. In describing these assumptions please explain the specific effect each assumption had on premium calculations. For example "in 1999 we used a medical inflation trend factor of 8% and a prescription drug inflation trend factor of 4% which in combination resulted in an increase in premiums for 1999 of - % and an increase in co-payments of -%."

11. For each Plan year 1998 through 2003, please identify the dollar value of claims incurred but not reported ("IBNR") that were used or relied on to determine premium amounts, co-payments or deductibles and explain how these dollar values were determined.

Because DuPont withdrew its proposal on the benefits package yesterday, July 13, 2004, the Union is urgently formulating benefit proposals. Accordingly, the Union is requesting that this information be provided **no later than Monday, July 19, 2004.**

Very truly yours,

Mark Schilling
President, PACE Local 2-786

James L. Briggs
PACE International Representative

cc: Kenneth O. Test, Region III, Vice President & Director, via fax
John Barcellona, PACE International Representative, via fax
Bargaining Committee, Local 2-786
Kathleen Hostetler, Esq., Counsel for PACE

PAPER, ALLIED-INDUSTRIAL, CHEMICAL and ENERGY
WORKERS INTL. UNION
PACE LOCAL 2-786

Mark A. Schilling, President
Thomas M. Campbell, Vice President
Carole E. Price, Secretary
Karen L. West, Treasurer

July 28, 2004

Via E-mail and Fax

Denise M. Keyser, Esq.
Ballard Spahr Andrews & Ingersoll, LLP
Plaza 1000-Suite 500
Voorhees, New Jersey 08043-4636

PACE Local 2-786 Request For Additional Information

Dear Ms. Keyser:

The Union is requesting the following additional census information in regards to the demographics of the bargaining unit. This information has been requested by the health care provider that we are currently in discussions with and is essential to the Union in order to formulate a benefit proposal for the successor contract. The Union is not requesting information that has already been provided.

Please provide the following information for all bargaining unit employee's at the Edgemoor Plant;

1. Family tier status
2. Zip code of residence

Please provide this information no later than Tuesday, August 3, 2004. Please note that the Union continues its request for information that was initially requested on July 14, 2004 regarding Beneflex.

Very truly yours,

Mark Schilling
President, PACE Local 2-786

James L. Briggs
PACE International Representative

cc: Kenneth O. Test, Region III, Vice President & Director, via fax
John Barcellona, PACE International Representative, via fax
Bargaining Committee, Local 2-786
Kathleen Hostetler, Esq., Counsel for PACE

PAPER, ALLIED-INDUSTRIAL, CHEMICAL and ENERGY
WORKERS INTL. UNION
PACE LOCAL 2-786

Mark A. Schilling, President
Thomas M. Campbell, Vice President
Carole E. Price, Secretary
Karen L. West, Treasurer

August 6, 2004

Via E-mail and Fax

Denise M. Keyser, Esq.
Ballard Spahr Andrews & Ingersoll, LLP
Plaza 1000-Suite 500
Voorhees, New Jersey 08043-4636

PACE Local 2-786 Request For Additional Information

Dear Ms. Keyser:

The Union is requesting that the census information previously provided to the Union in regards to the demographics of the bargaining unit be reformatted to reflect the employee's name or identifier, date of birth, gender, zip code of residence and family tier status. This information has been requested by the health care provider that we are currently in discussions with and is essential to the Union in order to formulate a benefit proposal for the successor contract. The Union was unaware that the census information would need to be aligned per each employee as this was pointed out to us by the health care provider.

Please provide the following information for all bargaining unit employee's at the Edgemoor Plant;

Employee name, date of birth, gender, zip code of residence & family tier status - in alignment

Please provide this information no later than Wednsday, August 11, 2004. Please note that the Union continues its request for information that was initially requested on July 14, 2004 regarding Beneflex.

Very truly yours,

Mark Schilling
President, PACE Local 2-786

James L. Briggs
PACE International Representative

cc: Kenneth O. Test, Region III, Vice President & Director, via fax
John Barcellona, PACE International Representative, via fax
Bargaining Committee, Local 2-786
Kathleen Hostetler, Esq., Counsel for PACE

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PARTNER RESPONSIBLE FOR
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DENISE M. KEYSER
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PERSONAL FAX: (856) 761-9036
E-MAIL: KEYSERD@BALLARDSPAHR.COM

August 12, 2004

Via E-mail (enclosures by regular mail)

Mark Schilling
President
PACE Local 2-786
2708 Chinchilla Drive
Wilmington, DE 19810

Via Fax (enclosures by regular mail)

James L. Briggs
P.A.C.E. International Representative
P.A.C.E. International Union
Region 1
1069 Upper Mountain Road
Lewistown, NY 14092

Re: PACE Local 2-786 Information Request #14

Dear Messrs. Schilling & Briggs:

This is in response to your letter dated Wednesday, July 14, 2004, seeking extensive information purportedly to assist the Union in formulating benefit proposals for the successor collective bargaining agreement for Edge Moor. We respond as follows:

¶ 1. "Please provide the demographics of the bargaining unit. Specifically, please provide the name, birth date and year, and gender of each bargaining unit employee at the Edge Moor Facility."

RESPONSE: The Union was handed this information across the bargaining table at the parties' Tuesday, July 20, 2004 negotiation session.

With respect to the Union's amplification of this request in your letter dated August 6, 2004, we are in the process of compiling this data and will forward it to you shortly.

¶ 2. "Please provide the hard claims paid for the last 5 years for **each** bargaining unit employee at the Edge Moor Facility for **each** of the following benefits:

a. Medical;

b. Dental;

c. Vision;

d. Prescription;

e. Employee Life Insurance;

f. Dependent Life Insurance;

g. Accidental Death Insurance."

RESPONSE: To the extent that PACE is seeking individualized information regarding health and welfare benefits received by bargaining unit employees, your request raises significant confidentiality concerns under both the National Labor Relations Act and the Health Insurance Portability and Accountability Act. DuPont is prepared to discuss these concerns with the Union in an attempt to reach a reasonable and proper accommodation of the Union's request for this personal and sensitive medical information for bargaining unit employees.

For **(a)** Medical, **(b)** Dental and **(d)** Prescription, listed below is aggregate claims data for 2001, 2002 and 2003 for the current bargaining unit members at the Edge Moor Plant.

	2001: #Claims/$Paid	2002: #Claims/$Paid	2003: #Claims/$Paid
(a) Medical	4874 / $452,257	4294 / $399,096	5321 / $638,871
(b) Dental	1628 / $88,684	1561 / $96,339	1330 / $83,947
(d) Prescription	3434 / $180,985	2774 / $140,949	2870 / $192,884

It is our understanding that these aggregate costs, coupled with the demographic data previously produced for the Union, is all that is typically needed for a third-party to design and cost-out a benefit plan.

With respect to **(c)** Vision, **(f)** Dependent Life Insurance and **(g)** Accidental Death Insurance, these are insurance programs offered by third-party vendors to DuPont employees. Employees purchase coverage directly from the insurer, with the Company making no contributions towards the cost of these benefits. As a result, the Company maintains no records responsive to your request with respect to vision benefits, dependent life insurance benefits and accidental death insurance benefits.

With respect to **(e)** Employee Life Insurance, as you know from the Plant's responses to previous Union requests, the beneficiaries of bargaining unit employees are eligible for a life insurance benefit equal to 1x the employee's normal annual earnings. This employee life insurance benefit is provided by the Company and paid out of the Plant's ordinary operating income at the time of death. Over the course of the last five years, no bargaining unit employee at Edge Moor has died, so no employee life insurance payments have been made.

¶ 3. "Please provide all claims reports or utilization reports of any kind (including, but not limited to a prescription drug provider, claims processor, or dental provider) for the Edge Moor Site for the last 5 years."

RESPONSE: We would appreciate clarification as to what the Union means by the terms "claims reports" and "utilization reports." Nevertheless, the Company does not receive any claims or utilization reports from our plan administrators by site. However, we believe that our response to Item #2, above, addresses this request.

¶ 4. "Please provide all Beneflex Plan records maintained for the Edge Moor location."

RESPONSE: This request is vague and unintelligible. If the Union seeks **every** record **in any way** relating to the Beneflex plan **anywhere** within the corporation regarding the Edge Moor location, it is unreasonably overbroad and burdensome. We would appreciate clarification from the Union as to the data that you actually are seeking.

¶ 5. "For each Beneflex Plan year for the last 5 years through the present date, please identify the dollar amount of all benefit claims paid by the Beneflex Plan. Please provide the same information for the Edge Moor Plant only."

RESPONSE: Attached please find the "Summary Annual Reports" issued to all participants in the Beneflex Plan for 1999-2002. The Report for 2003 is not yet available. This information is not separately maintained by DuPont on a site-by-site basis. See also, the response to Item #2, above.

¶ 6. "For each Beneflex Plan year 1998 through 2003, please identify the dollar amount of the following expenses for (i) the Edge Moor Plant only and (ii) also for the entire Plan:

a. Benefit payments made directly to either participants or beneficiaries pursuant to the Plan.

b. Payments made to insurance carriers or other vendors for the provision of benefits under the Plan.

c. Salaries or other allowances for personnel performing services for the Plan.

d. Accounting fees related to Plan operations or administration.

e. Actuarial fees related to Plan operations or administration.

f. Contract administrator fees for services related to the Plan.

g. Legal fees for services related to the Plan.

h. Other Plan administrative expenses not identified above (please identify and provide amount)."

RESPONSE: Your Union made this identical request on December 16, 2002, and the Plant responded to each of these questions for the years 1998 through 2001. We assume that your Union maintained this information in its possession. If not, please let me know and arrangements can be made to resubmit the same data to you again.

For the years 2002 and 2003, we provide the following:

a. We do not have claims data broken out as to how much is paid to participants or beneficiaries. Additionally, for the Edge Moor Plant only, we direct your attention to the response to Item #2, above, and Item #6(f) below. For the entire Plan, we direct your attention to the response to Item #5, above, and Item #6(f) below.

b. See response to #2 above for claims data and 6(f) for administrative fees.

c. Costs incurred for DuPont employees performing services for the Plan are not included in the cost of the Plan. As such, this request for information regarding non-bargaining unit personnel is not relevant.

d. There are no third-party accounting fees related to Plan operations and administration.

e. There are no charges associated with actuarial services provided by third-party vendors.

f. Please clarify what is intended by the term "contract administrator fees." In any event, the total administrative costs for the operation of the Plan (in the millions of dollars) will be provided in the near future.

g. There are no charges associated with 3rd party legal services with regard to operation and administration of the Plan. Costs incurred for DuPont employees performing services for the Plan are not included in the cost of the Plan. As such, this request for information regarding non-bargaining unit personnel is not relevant.

h. N/A.

¶ 7. RESPONSE: Item #7 is identical, *verbatim*, to Item #6, so please refer to the responses given above.

¶ 8. "For each Beneflex Plan year 1998 through 2003, please identify the dollar amount of the costs referred to in Item #7 that was [*sic*] paid by DuPont versus the dollar amount that was paid by employees represented by the Union at the Edge Moor Plant."

RESPONSE: See Item #6(a), above. Cost sharing data is not tracked by site.

¶ 9. "Please identify each item that is included in calculating the costs referred to in Item 7 for each year, 1998 through 2003 and provide the corresponding dollar amount of that item."

RESPONSE: This request is vague and unintelligible. It is also unreasonably overbroad and burdensome. We would appreciate clarification from the Union as to the data you actually are seeking.

¶ 10. "For each Plan year 1998 through 2003, please identify and describe the assumptions (including actuarial assumptions, medical inflation trend factors, industry standards) used to determine premiums, co-payments or deductibles for each of the benefit plans offered by the Plan. In describing these assumptions, please explain the specific effect each assumption had on premium calculations. For example, 'in 1999 we used a medical inflation trend factor of the 8% and a prescription drug inflation trend factor of 4% which in combination resulted in an increase in premiums for 1999 of -% and an increase in co-payments of -%.'"

RESPONSE: Medical plan rate calculation sheets for 1999 through 2002, showing how premium increases were determined, were previously provided to your Union on February 26, 2003. Nevertheless, we have provided them to you again, as attached. The rate calculation for 2001 includes a brief explanation for each line on the sheets. Beginning in 2003, the Company adjusted the cost sharing policy. The new policy was communicated to employees in the fall of 2002 as follows: "In the future, we will look at our total costs and share them between the Company and employees at a competitive level. For 2003, we expect that this will result in sharing overall medical costs at about 70% for the Company and 30% for you. We will continue to monitor this approach over time."

There are no premiums for the standard Dental option. The premiums for the "high dental option" are based upon experience and cost of the high option as compared with experience and cost related to the standard option.

Because vision, dependent life insurance and accidental death insurance benefits are provided by third-party vendors, DuPont has no involvement in the setting of those premiums and has no information responsive to your request.

With respect to employee life insurance, because this benefit is paid out of on-going Plant assets, there are no premiums, co-payments or deductibles computed for this benefit.

¶ 11. "For each Plan year 1998 through 2003, please identify the dollar value of claims incurred but not reported ('IBNR') that were used or relied on to determine premium amounts, co-payments or deductibles and explain how these dollar values were determined."

RESPONSE: The respective amounts for IBNR for active employees and retirees (stated in the millions of dollars) are as follows:

1998	$43MM
1999	$11MM
2000	$42MM
2001	$59MM
2002	$79MM
2003	$71MM

These preceding numbers are based on historic runout and standard actuarial methodology.

Please let me know if you have any questions.

Very truly yours,

Denise M. Keyser (C)

Denise M. Keyser

DMK/pa
cc: Kathleen Hostetler, Esquire (via fax/e-mail)

BENEFIT PLAN STATEMENTS FILED WITH PWBA

In 2000, the Company will submit reports on Benefit Plans to the Pension and Welfare Benefits Administration, an agency of the Department of Labor, by October 16. These 1999 Summary Annual Reports provide you with an outline of the financial status of the Pension & Retirement Plan, Group Life Insurance Plans, Medical Care Plan, Dental Assistance Plan, Flexible Spending Account Plan and Vision Care Plan.

SUMMARY ANNUAL REPORT FOR THE DUPONT PENSION AND RETIREMENT PLAN

This is a summary of the annual report for the DuPont Pension and Retirement plan, EIN 51-0014090 for the plan year ending December 31, 1999. The annual report will be filed by October 16, 2000 with the Pension and Welfare Benefits Administration, as required under the Employee Retirement Income Security Act of 1974 (ERISA).

Basic financial statement

Benefits under the plan are provided by a trust. Plan expenses were $1,583,192,371. These expenses included $35,802,812 in administrative expenses and $1,547,390,059 in benefits paid to participants and beneficiaries. A total of 156,286 persons were participants in or beneficiaries of the plan at the end of the year, although not all of these persons had yet earned the right to receive benefits.

The value of plan assets, after subtracting liabilities of the plan, was $18,347,239,647 as of December 31, 1999, compared to $18,022,461,473 as of January 1, 1999. During the plan year the plan experienced an increase in its net assets of $324,778,174. This increase includes unrealized appreciation or depreciation in the value of plan assets; that is, the difference between the value of the plan's assets at the end of the year and the value of the plan assets at the beginning of the year or the cost of assets acquired during the year.

The plan had total income of $2,792,110,299, all of which was earnings from investments.

Minimum funding standards

An actuary's statement indicates that the plan's assets exceed the minimum funding standards of ERISA, and therefore no Company contributions were made in 1999.

SUMMARY ANNUAL REPORT FOR THE DUPONT GROUP LIFE INSURANCE PLANS

This is a summary of the annual report for the DuPont Contributory and Noncontributory Group Life Insurance plans*, EIN 51-0014090, for the period January 1, 1999 through December 31, 1999. The annual report has been filed with the Pension and Welfare Benefits Administration, as required under the Employee Retirement Income Security Act of 1974 (ERISA).

*Includes Accidental Death and Dependent Life

Insurance information

The plan has contracts with the CIGNA Employee Benefits Companies to pay all death claims and disability claims incurred under the terms of the plan. The total premiums paid for the plan year ending December 31, 1999 were $81,995,889.

Because they are so-called "experience-rated" contracts, the premium costs are affected by, among other things, the number and size of claims. Of the total insurance premiums paid for the plan year ending December 31, 1999, the premiums paid under such "experience-rated" contracts were $81,995,889, and the total of all benefit claims paid during the plan year was $76,760,039.

SUMMARY ANNUAL REPORT FOR THE DUPONT MEDICAL CARE PLAN

This is a summary of the annual report for the DuPont Medical Care Coverage Policy, EIN 51-0014090, for the period January 1, 1999 through December 31, 1999. The annual report has been filed with the Pension and Welfare Benefits Administration, as required under the Employee Retirement Income Security Act of 1974 (ERISA).

Insurance information

The plan has contracts with insurance carriers and health maintenance organizations to pay certain health insurance claims incurred under the terms of the coverage. The total premium paid for the plan year ending December 31, 1999 were $1,370,554.

Additional information

The company also reimburses several other carriers for health claims paid under the terms of the coverage and expenses. This information is not required to be included in the annual report filed with the IRS. For the plan year ending December 31, 1999 the amount paid under these contracts was $501,386,701,14.

SUMMARY ANNUAL REPORT FOR THE DUPONT DENTAL ASSISTANCE PLAN

This is a summary of the annual report for the DuPont Dental Assistance Plan, EIN 51-0014090, for the period January 1, 1999 through December 31, 1999. The annual report has been filed with the Pension and Welfare Benefits Administration, as required under the Employee Retirement Income Security Act of 1974 (ERISA).

Insurance Information

The plan has contracts with health maintenance organizations to pay certain claims incurred under the terms of the plan. The total premiums paid for the plan year ending December 31, 1999 were $83,563.

Additional Information

The company also reimburses one carrier for health claims paid under the terms of the coverage and expenses. This information is not required to be included in the annual report filed with PWBA. For the plan year ending December 31, 1999 the amount paid under these contracts was $49,691,765.84.

SUMMARY ANNUAL REPORT FOR THE DUPONT DEPENDENT CARE AND HEALTHCARE SPENDING ACCOUNT PLAN

This is a summary of the annual report for the DuPont Dependent Care and Healthcare Spending Account Plan, EIN 51-0014090, for the plan year ending January 1, 1999 through December 31, 1999. The annual report has been filed with the Pension and Welfare Benefits Administration, as required under the Employee Retirement Income Security Act of 1974 (ERISA).

Additional Information

The company reimburses one carrier for Spending Account claims paid under the terms of the coverage and expenses. This information is not required to be included in the annual report filed with PWBA. For the plan year ending December 31, 1999 the amount paid under these contracts was $14,657,060.74.

SUMMARY ANNUAL REPORT FOR THE DUPONT VISION CARE PLAN

This is a summary of the annual report for the DuPont Vision Care Plan, EIN 51-0014090, for the period January 1, 1999 through December 31, 1999. The annual report has filed with the Pension and Welfare Benefits Administration, as required under the Employee Retirement Income Security Act of 1974 (ERISA).

Insurance Information

The plan has contracts with Vision Benefits of America to pay all claims incurred under the terms of the plan. The total premiums paid for the plan year ending December 31, 1999 were $1,568,964.

Because they are so-called "experience-rated" contracts, the premium costs are affected by, among other things, the number and size of claims. Of the total insurance premiums paid for the plan year ending December 31, 1999, the premiums paid under such "experience-rated" contracts were $1,568,964, and the total of all benefit claims paid under these experience-rated contracts during the plan year was $1,090,478.

YOUR RIGHTS TO ADDITIONAL INFORMATION

You have the right to receive a copy of each of these full annual reports, or any part thereof, on request. The items listed below are included in that report:

1. An accountant's report (Pension and Retirement report only);
2. Financial information and information on payments to service providers;
3. Information regarding any common or collective trusts, pooled separate accounts; master trusts or 103-12 investment entities in which the plan participates (Pension and Retirement Plan only), and
4. Actuarial information regarding the funding of the plan (Pension and Retirement Plan only).
5. Insurance information, including sales commissions paid by insurance carriers (Group Life, Medical Care, Dental Assistance and Vision Care only).

To obtain a copy of the full annual report, or any part thereof, write or call the office of David G. Obarski, who is the Operations & Compliance Manager at the:

DuPont Company
1007 Market Street
Wilmington, DE 19898

(302) 774-1000

The charge to cover copying costs will be $15.25 for the full annual Pension and Retirement Plan report, $2.25 for Group Life, $6.00 for Medical Care, $2.00 for Dental Care, $2.00 for FSA, $2.00 for Vision Care or $0.25 per page for any part thereof.

You also have the right to receive from the plan administrator, on request and at no charge, a statement of the assets and liabilities of the plan and accompanying notes, or statement of the income and expenses of the plan and accompanying notes, or both. If you request a copy of a full annual report from the plan administrator, these two statements and accompanying notes will be included as part of that report. The charge to cover copying costs given above does not include a charge for the copying of these portions of the report because these portions are furnished without charge.

Requests to the Department should be addressed to: Public Disclosure Room N5638, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington DC 20210.

October 2001

BENEFIT PLAN STATEMENTS FILED WITH PWBA

In 2001, the Company will submit reports on Benefit Plans to the Pension and Welfare Benefits Administration, an agency of the Department of Labor, by October 16. These 2000 Summary Annual Reports provide you with an outline of the financial status of the Pension & Retirement Plan, Group Life Insurance Plans, Medical Care Plan, Dental Assistance Plan, Flexible Spending Account Plan and Vision Care Plan.

SUMMARY ANNUAL REPORT FOR THE DUPONT DOW ELASTOMERS PENSION AND RETIREMENT PLAN

This is a summary of the annual report for the DuPont Dow Elastomers Pension and Retirement plan, EIN 51-0371420 for the plan year ending December 31, 2000. The annual report will be filed by October 16, 2001 with the Pension and Welfare Benefits Administration, as required under the Employee Retirement Income Security Act of 1974 (ERISA).

Basic financial statement

Benefits under the plan are provided by a trust. Plan expenses were $3,469,028. These expenses included $248,789 in administrative expenses and $3,220,239 in benefits paid to participants and beneficiaries. A total of 1,668 persons were participants in or beneficiaries of the plan at the end of the year, although not all of these persons had yet earned the right to receive benefits.

The value of plan assets, after subtracting liabilities of the plan, was $123,164,830 as of December 31, 2000, compared to $111,620,893 as of January 1, 2000. During the plan year the plan experienced an increase in its net assets of $11,543,937. This increase includes unrealized appreciation or depreciation in the value of plan assets; that is, the difference between the value of the plan's assets at the end of the year and the value of the plan assets at the beginning of the year or the cost of assets acquired during the year.

The plan had total income of $15,012,865, all of which was earnings from investments.

Minimum funding standards

An actuary's statement indicates that the plan's assets exceed the minimum funding standards of ERISA, and therefore no Company contributions were made in 1999.

SUMMARY ANNUAL REPORT FOR THE DUPONT GROUP LIFE INSURANCE PLANS

This is a summary of the annual report for the DuPont Contributory and Noncontributory Group Life Insurance plans*, EIN 51-0014090, for the period January 1, 1999 through December 31, 1999. The annual report has been filed with the Pension and Welfare Benefits Administration, as required under the Employee Retirement Income Security Act of 1974 (ERISA).

*Includes Accidental Death and Dependent Life

Insurance information

The plan has contracts with the CIGNA Employee Benefits Companies to pay all death claims and disability claims incurred under the terms of the plan. The total premiums paid for the plan year ending December 31, 1999 were $81,995,689.

Because they are so-called "experience-rated" contracts, the premium costs are affected by, among other things, the number and size of claims. Of the total insurance premiums paid for the plan year ending December 31, 1999, the premiums paid under such "experience-rated" contracts were $81,995,689, and the total of all benefit claims paid during the plan year was $76,750,039.

SUMMARY ANNUAL REPORT FOR THE DUPONT MEDICAL CARE PLAN

This is a summary of the annual report for the DuPont Medical Care Coverage Policy, EIN 51-0014090, for the period January 1, 1999 through December 31, 1999. The annual report has been filed with the Pension and Welfare Benefits Administration, as required under the Employee Retirement Income Security Act of 1974 (ERISA).

Insurance information

The plan has contracts with insurance carriers and health maintenance organizations to pay certain health insurance claims incurred under the terms of the coverage. The total premium paid for the plan year ending December 31, 1999 were $1,370,554.

Additional information

The company also reimburses several other carriers for health claims paid under the terms of the coverage and expenses. This information is not required to be included in the annual report filed with the IRS. For the plan year ending December 31, 1999 the amount paid under these contracts was $501,386,701.14.

SUMMARY ANNUAL REPORT FOR THE DUPONT DENTAL ASSISTANCE PLAN

This is a summary of the annual report for the DuPont Dental Assistance Plan, EIN 51-0014090, for the period January 1, 2000 through December 31, 2000. The annual report has been filed with the Pension and Welfare Benefits Administration, as required under the Employee Retirement Income Security Act of 1974 (ERISA).

Insurance Information

The plan has contracts with health maintenance organizations to pay certain claims incurred under the terms of the plan. The total premiums paid for the plan year ending December 31, 2000 were $61,631.

Additional Information

The company also reimburses one carrier for health claims paid under the terms of the coverage and expenses. This information is not required to be included in the annual report filed with PWBA. For the plan year ending December 31, 2000 the amount paid under these contracts was $48,678,880.

SUMMARY ANNUAL REPORT FOR THE DUPONT DEPENDENT CARE AND HEALTHCARE SPENDING ACCOUNT PLAN

This is a summary of the annual report for the DuPont Dependent Care and Healthcare Spending Account Plan, EIN 51-0014090, for the plan year ending January 1, 2000 through December 31, 2000. The annual report has been filed with the Pension and Welfare Benefits Administration, as required under the Employee Retirement Income Security Act of 1974 (ERISA).

Additional Information

The company reimburses one carrier for Spending Account claims paid under the terms of the coverage and expenses. This information is not required to be included in the annual report filed with PWBA. For the plan year ending December 31, 2000 the amount paid under these contracts was $15,227,104.

SUMMARY ANNUAL REPORT FOR THE DUPONT VISION CARE PLAN

This is a summary of the annual report for the DuPont Vision Care Plan, EIN 51-0014090, for the period January 1, 2000 through December 31, 2000. The annual report has filed with the Pension and Welfare Benefits Administration, as required under the Employee Retirement Income Security Act of 1974 (ERISA).

Insurance Information

The plan has contracts with Vision Benefits of America to pay all claims incurred under the terms of the plan. The total premiums paid for the plan year ending December 31, 2000 were $1,685,774.

Because they are so-called "experience-rated" contracts, the premium costs are affected by, among other things, the number and size of claims. Of the total insurance premiums paid for the plan year ending December 31, 2000, the premiums paid under such "experience-rated" contracts were $1,685,774, and the total of all benefit claims paid under these experience-rated contracts during the plan year was $1,249,131.

YOUR RIGHTS TO ADDITIONAL INFORMATION

You have the right to receive a copy of each of these full annual reports, or any part thereof, on request. The items listed below are included in that report:

1. An accountant's report (Pension and Retirement report only);
2. Financial information and information on payments to service providers;
3. Information regarding any common or collective trusts, pooled separate accounts; master trusts or 103-12 investment entities in which the plan participates (Pension and Retirement Plan only), and
4. Actuarial information regarding the funding of the plan (Pension and Retirement Plan only).
5. Insurance information, including sales commissions paid by insurance carriers (Group Life, Medical Care, Dental Assistance and Vision Care only).

To obtain a copy of the full annual report, or any part thereof, write or call the office of Penny Wagnon, who is the Operations & Compliance Manager at the:

DuPont Company
1007 Market Street
Wilmington, DE 19898

(302) 774-1000

The charge to cover copying costs will be $17.00 for the full annual Pension and Retirement Plan report, $3.75 for Group Life, $4.75 for Medical Care, $2.75 for Dental Care, $1.00 for FSA, $1.75 for Vision Care or $0.25 per page for any part thereof.

You also have the right to receive from the plan administrator, on request and at no charge, a statement of the assets and liabilities of the plan and accompanying notes, or statement of the income and expenses of the plan and accompanying notes, or both. If you request a copy of a full annual report from the plan administrator, these two statements and accompanying notes will be included as part of that report. The charge to cover copying costs given above does not include a charge for the copying of these portions of the report because these portions are furnished without charge.

Requests to the Department should be addressed to: Public Disclosure Room N5638, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington DC 20210.

BENEFIT PLAN STATEMENTS FILED WITH PWBA

In 2002, the Company submitted reports on Benefit Plans to the Pension and Welfare Benefits Administration, an agency of the Department of Labor. These 2001 Summary Annual Reports provide you with an outline of the financial status of the Pension & Retirement Plan, Group Life Insurance Plans, Medical Care Plan, Dental Assistance Plan, and Vision Care Plan.

SUMMARY ANNUAL REPORT FOR THE DUPONT PENSION AND RETIREMENT PLAN

This is a summary of the annual report for DuPont Pension and Retirement Plan, EIN 51-0014090, plan #001, for the plan year ending December 31, 2001. The annual report was filed by October 15, 2002 with the Pension and Welfare Benefits Administration, as required under the Employee Retirement Income Security Act of 1974 (ERISA).

Basic Financial Statement

Benefits under the plan are provided by a trust. Plan expenses were $1,266,540,114. These expenses included $39,727,721 in administrative expenses and $1,226,812,393 in benefits paid to participants. A total of 154,379 persons were participants in or beneficiaries of the plan at the end of the plan year, although not all of these persons had yet earned the right to receive benefits.

The value of plan assets, after subtracting liabilities of the plan, was $15,254,904,592 as of December 31, 2001, compared to $16,959,542,736 as of January 1st, 2001. During the plan year the plan experienced a decrease in its net assets of $1,704,638,144. This decrease includes plan transfers as well as unrealized appreciation or depreciation in the value of plan assets; that is, the difference between the value of the plan's assets at the end of the year and the value of the assets at the beginning of the year or the cost of assets acquired during the year.

The plan had transfers out of $65,018,811. The plan had total income loss of $373,079,219, all of which was a loss from investments.

Minimum Funding Standards

An actuary's statement shows that the plan's assets exceed the minimum funding standards of ERISA, and therefore no company contributions were made in 2001.

SUMMARY ANNUAL REPORT FOR THE DUPONT GROUP LIFE INSURANCE PLANS

This is a summary of the annual report for the DuPont Contributory and Noncontributory Group Life Insurance plans EIN 51-0014090, plan #501 for plan year ending December 31, 2001. The annual report was filed by October 15, 2002 with the Pension and Welfare Benefits Administration, as required under the Employee Retirement Income Security Act of 1974 (ERISA).

Insurance Information

The plan has contracts with the Prudential Financial to pay all death and disability claims under the terms of the plan in effect at the time the claim was incurred. The total premiums paid for the plan year ending December 31, 2001 were $99,051,446.

Because one of these contracts is a so-called experience-rated contract, the premium costs are affected by, among other things, the number and size of claims. Of the total insurance premiums paid for the plan year ending December 31, 2001, the premiums paid under such ``experience- rated" contracts were $86,978,301 and the total of all benefit claims paid under these experience-rated contracts during the plan year was $69,146,135.

SUMMARY ANNUAL REPORT FOR THE DUPONT MEDICAL CARE PLAN

This is a summary of the annual report for the DuPont Medical Care Coverage Policy, EIN 51-0014090, plan #502 for plan year ending December 31, 2001. The annual report was filed by October 15, 2002 with the Pension and Welfare Benefits Administration, as required under the Employee Retirement Income Security Act of 1974 (ERISA).

DuPont has committed itself to pay certain medical claims under the terms of the plan in effect at the time the claim was incurred.

Insurance Information

The plan has contracts with insurance carriers and health maintenance organizations to pay certain medical claims under the terms of the plan in effect at the time the claim was incurred. The total premiums paid for the plan year ending December 31, 2001 were $2,254,086.

Additional Information

The company also reimburses several other carriers for health claims and related expenses paid under the terms of the plan in effect at the time the claim was incurred. This information is not required to be included in the annual report filed with the IRS. For the plan year ending December 31, 2001, the amount paid under these contracts was $546,804,569.

SUMMARY ANNUAL REPORT FOR THE DUPONT DENTAL ASSISTANCE PLAN

This is a summary of the annual report for the DuPont Dental Assistance Plan, EIN 51-0014090, plan #507 for plan year ending December 31, 2001. The annual report was filed by October 15, 2002 with the Pension and Welfare Benefits Administration, as required under the Employee Retirement Income Security Act of 1974 (ERISA).

DuPont has committed itself to pay certain dental claims under the terms of the plan in effect at the time the claim was incurred.

Insurance Information

The plan has contracts with health maintenance organizations to pay certain dental claims under the terms of the plan in effect at the time the claim was incurred. The total premiums paid for the plan year ending December 31, 2001 were $85,752.

Additional Information

The company also reimburses other carriers for dental claims under the terms of the plan in effect at the time the claim was incurred and expenses. This information is not required to be included in the annual report filed with the IRS. For the plan year ending December 31, 2001, the amount paid under these contracts was $51,848,572.

SUMMARY ANNUAL REPORT FOR THE DUPONT VISION CARE PLAN

This is a summary of the annual report for the DuPont Vision Care plan EIN 51-0014090, plan #515 for plan year ending December 31, 2001. The annual report will be filed by October 15, 2002 with the Pension and Welfare Benefits Administration, as required under the Employee Retirement Income Security Act of 1974 (ERISA).

Insurance Information

The plan has contracts with Vision Benefits of America to pay all vision claims under the terms of the plan in effect at the time the claim was incurred. The total premiums paid for the plan year ending December 31, 2001 were $1,707,465.

Because they are so called ``experience-rated'' contracts, the premium costs are affected by, among other things, the number and size of claims. Of the total insurance premiums paid for the plan year ending December 31, 2001, the premiums paid under such ``experience-rated'' contracts were $1,707,465 and the total of all benefit claims paid under these experience-rated contracts during the plan year was $1,485,646.

Your Rights to Additional Information

You have the right to receive a copy of the full annual report, or any part thereof, on request. The items listed below are included in that report:

The Pension and Retirement Plan includes:

An accountant's report; schedule of assets held for investment; financial information and information on payments to service providers; fiduciary information, including non-exempt transactions between the plan and parties-in-interest (that is, persons who have certain relationships with the plan); transactions in excess of 5 percent of the plan assets; information regarding any common or collective trusts, pooled separate accounts, master trusts or 103-12 investment entities in which the plan participates, and actuarial information regarding the funding of the plan.

All other plans include:

Information on payments to certain service providers and insurance information including sales commissions paid by insurance carriers.

To obtain a copy of the full annual report, or any part thereof, write or call the office of Penny Wagnon, who is Compliance Manager:

DuPont Company
Benefit Plan Annual Report
1007 Market Street
Wilmington, DE 19898
302-774-1000

The charge to cover copying costs for the full annual report will be:

Pension and Retirement Plan	$17.25
Group Life Plan	$ 3.00
Medical Plan	$ 5.00
Dental Assistance Plan	$ 3.00
Vision Care Plan	$ 2.00

Or $0.25 per page for any part thereof.

You also have the right to receive from the plan administrator, on request and at no charge, a statement of the assets and liabilities of the plan and accompanying notes, or a statement of income and expenses of the plan and accompanying notes, or both. If you request a copy of the full annual report from the plan administrator, these two statements and accompanying notes will be included as part of that report. The charge to cover copying costs given above does not include a charge for the copying of these portions of the report because these portions are furnished without charge.

You also have the legally protected right to examine the annual report at the main office of the plan at the address listed above and at the U.S. Department of Labor in Washington, D.C., or to obtain a copy from the U.S. Department of Labor upon payment of copying costs. Requests to the Department should be addressed to: Public Disclosure Room, Room N5638, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

BENEFIT PLAN STATEMENTS
FILED WITH EMPLOYEE BENEFITS SECURITY ADMINISTRATION

In 2003, the Company submitted reports on Benefit Plans to the Employee Benefits Security Administration, an agency of the Department of Labor. These 2002 Summary Annual Reports provide you with an outline of the financial status of the Pension & Retirement Plan, Group Life Insurance Plans, Medical Care Plan, Dental Assistance Plan, Vision Care Plan and Long Term Care. You may or may not be eligible for all of these plans.

SUMMARY ANNUAL REPORT FOR THE DUPONT PENSION AND RETIREMENT PLAN

This is a summary of the annual report for DuPont Pension and Retirement Plan, EIN 51-0014090, plan #001, for the plan year ending December 31, 2002. The annual report was filed with the Employee Benefits Security Administration, as required under the Employee Retirement Income Security Act of 1974 (ERISA).

Basic Financial Statement

Benefits under the plan are provided by a trust. Plan expenses were $1,244,989,385. These expenses included $53,214,982 in administrative expenses and $1,191,774,403 in benefits paid to participants. A total of 152,879 persons were participants in or beneficiaries of the plan at the end of the plan year, although not all of these persons had yet earned the right to receive benefits.

The value of plan assets, after subtracting liabilities of the plan, was $12,472,169,472 as of December 31, 2002, compared to $15,254,904,592 as of January 1st, 2002. During the plan year the plan experienced a decrease in its net assets of $2,782,735,120. This decrease includes unrealized appreciation or depreciation in the value of plan assets; that is, the difference between the value of the plan's assets at the end of the year and the value of the assets at the beginning of the year or the cost of assets acquired during the year.

The plan had total loss from investment of $1,537,745,735.

Minimum Funding Standards

An actuary's statement shows that the plan's assets exceed the minimum funding standards of ERISA, and therefore no company contributions were made in 2002.

SUMMARY ANNUAL REPORT FOR THE DUPONT GROUP LIFE INSURANCE PLANS

This is a summary of the annual report for the DuPont Contributory and Noncontributory Group Life Insurance plans EIN 51-0014090, plan #501 for plan year ending December 31, 2002. The annual report was filed with the Employee Benefits Security Administration, as required under the Employee Retirement Income Security Act of 1974 (ERISA).

Insurance Information

The plan has contracts with the Prudential Financial to pay all death and disability claims under the terms of the plan in effect at the time the claim was incurred. The total premiums paid for the plan year ending December 31, 2002 were $88,001,420.

Because one of these contracts is a so-called experience-rated contract, the premium costs are affected by, among other things, the number and size of claims. Of the total insurance premiums paid for the plan year ending December 31, 2002, the premiums paid under such ``experience-rated" contracts were $74,652,971 and the total of all benefit claims paid under these experience-rated contracts during the plan year was $66,083,477.

SUMMARY ANNUAL REPORT FOR THE DUPONT MEDICAL CARE PLAN

This is a summary of the annual report for the DuPont Medical Care Coverage Policy, EIN 51-0014090, plan #502 for plan year ending December 31, 2002. The annual report was filed with the Employee Benefits Security Administration, as required under the Employee Retirement Income Security Act of 1974 (ERISA).

DuPont has committed itself to pay certain medical claims under the terms of the plan in effect at the time the claim was incurred.

Insurance Information

The plan has contracts with insurance carriers and health maintenance organizations to pay certain medical claims under the terms of the plan in effect at the time the claim was incurred. The total premiums paid for the plan year ending December 31, 2002 were $7,499,589.

Additional Information

The company also reimburses several other carriers for health claims and related expenses paid under the terms of the plan in effect at the time the claim was incurred. This information is not required to be included in the annual report filed with the IRS. For the plan year ending December 31, 2002, the amount paid under these contracts was $490,289,964.

SUMMARY ANNUAL REPORT FOR THE DUPONT DENTAL ASSISTANCE PLAN

This is a summary of the annual report for the DuPont Dental Assistance Plan, EIN 51-0014090, plan #507 for plan year ending December 31, 2002. The annual report was filed with the Employee Benefits Security Administration, as required under the Employee Retirement Income Security Act of 1974 (ERISA).

DuPont has committed itself to pay certain dental claims under the terms of the plan in effect at the time the claim was incurred.

Insurance Information

The plan has contracts with health maintenance organizations to pay certain dental claims under the terms of the plan in effect at the time the claim was incurred. The total premiums paid for the plan year ending December 31, 2002 were $578,573.

Additional Information

The company also reimburses other carriers for dental claims under the terms of the plan in effect at the time the claim was incurred and expenses. This information is not required to be included in the annual report filed with the IRS. For the plan year ending December 31, 2002, the amount paid under these contracts was $48,363,137.

SUMMARY ANNUAL REPORT FOR THE DUPONT VISION CARE PLAN

This is a summary of the annual report for the DuPont Vision Care plan EIN 51-0014090, plan #515 for plan year ending December 31, 2002. The annual report was filed with the Employee Benefits Security Administration, as required under the Employee Retirement Income Security Act of 1974 (ERISA).

Insurance Information

The plan has contracts with Vision Benefits of America to pay all vision claims under the terms of the plan in effect at the time the claim was incurred. The total premiums paid for the plan year ending December 31, 2002 were $1,507,809.

Because they are so called ``experience-rated'' contracts, the premium costs are affected by, among other things, the number and size of claims. Of the total insurance premiums paid for the plan year ending December 31, 2002, the premiums paid under such ``experience-rated'' contracts were $1,507,809 and the total of all benefit claims paid under these experience-rated contracts during the plan year was $1,313,474.

SUMMARY ANNUAL REPORT FOR THE DUPONT LONG TERM CARE PLAN

This is a summary of the annual report for the DuPont Long Term Care plan EIN 51-0014090, plan #516 for plan year ending December 31, 2002. The annual report was filed with the Employee Benefits Security Administration, as required under the Employee Retirement Income Security Act of 1974 (ERISA).

Insurance Information

The plan has a contract with Met Life to pay Long Term Care claims under the terms of the plan in effect at the time the claim was incurred. The total premiums paid for the plan year ending December 31, 2002 were $2,316,156.

Because they are so called ``experience-rated'' contracts, the premium costs are affected by, among other things, the number and size of claims. Of the total insurance premiums paid for the plan year ending December 31, 2002, the premiums paid under such ``experience-rated'' contracts were $2,316,156 and the total of all benefit claims paid under these experience-rated contracts during the plan year was $23,720.

Your Rights to Additional Information

You have the right to receive a copy of the full annual report, or any part thereof, on request. The items listed below are included in that report.

The Pension and Retirement Plan includes:

An accountant's report; schedule of assets held for investment; financial information and information on payments to service providers; fiduciary information, including non-exempt transactions between the plan and parties-in-interest (that is, persons who have certain relationships with the plan); transactions in excess of 5 percent of the plan assets; information regarding any common or collective trusts, pooled separate accounts, master trusts or 103-12 investment entities in which the plan participates, and actuarial information regarding the funding of the plan.

All other plans include:

Information on payments to certain service providers and insurance information including sales commissions paid by insurance carriers.

If you would like more information regarding your benefits, please call DuPont Connections at 800-775-5955. To obtain a copy of the full annual report, or any part thereof, write or call the office of Penny Wagnon, who is Compliance Manager:

DuPont Company
Benefit Plan Annual Report
1007 Market Street
Wilmington, DE 19898
302-774-1000

The charge to cover copying costs for the full annual report will be:

Pension and Retirement Plan	$17.25
Group Life Plan	$ 3.00
Medical Plan	$ 9.00
Dental Assistance Plan	$ 4.00
Vision Care Plan	$ 2.00
Long Term Care Plan	$ 2.00

Or $0.25 per page for any part thereof.

You also have the right to receive from the plan administrator, on request and at no charge, a statement of the assets and liabilities of the plan and accompanying notes, or a statement of income and expenses of the plan and accompanying notes, or both. If you request a copy of the full annual report from the plan administrator, these two statements and accompanying notes will be included as part of that report. The charge to cover copying costs given above does not include a charge for the copying of these portions of the report because these portions are furnished without charge.

You also have the legally protected right to examine the annual report at the main office of the plan at the address listed above and at the U.S. Department of Labor in Washington, D.C., or to obtain a copy from the U.S. Department of Labor upon payment of copying costs. Requests to the Department should be addressed to: Public Disclosure Room, Room N5638, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

1999 Premium Increases

Claim Projection Process

• 1997 Claims		$308MM
• 1998 Proj Clms + Admin	(308MMx1.04x1.075)	$344MM
• 1999 Proj Clms + Admin	(344MMx1.04)	$358MM
• Reduction for Benefit Changes		- $2MM
• Net 1999 Adj Clms + Adm	($358-2)	$356MM
• Increase 1998 to 1999	($356-344)	$12MM
• Adjust to Eligible Charge	(12/.87)	$14MM
• Employee, PM ret portion	(x.50)	$7MM
• Additional Savings		-$4.6MM
• EE, PM ret portion of Savings	(x.50)	-$2.3MM
• EE, PM net total $ increase	($7-2.3)	$4.7MM

[597]

1999 Premium Increases

Development of Monthly Rates

- EE, PM ret net total $ increase ($7-2.3) $4.7MM
- Number of Contracts and rate relationships:

	Number of Contracts	Relative Cost
Single	17,349	1x
2 Person	25,827	2x
Family	29,759	3x

- Monthly increase per contract:

  $ 4.7MM/[12(17349+2x25827+3x29759)] = $2.47

- Rate Increases :

S	$2.50
2P	$5.00
F	$7.50

[598]

2000 Premium Increases
Aggregate Claim Projection

• 1998 Claims		$322 MM
• 1999 Proj Clms + Admin	(x1.055x1.075)	364
• Reduction for 1/1/99 Benefit Changes		-2
• Net 1999 Adj Clms + Adm	($364-2)	$362
• 2000 Proj Clms + Admin	($362x1.055)	382
• Increase 1999 to 2000	($382-362)	20
• Adjust to Eligible Charge	(/.87)	23
• Employee, PM ret portion	(x.50)	11.5
• Savings (Rx mfg rebate)		- 5.2
• EE, PM ret portion of Savings	(x.50)	- 2.6
• Ee, PM net total $ increase	($11.5-2.6)	8.9

[599]

2000 Premium Increases
Development of Monthly Rates

- Ee,PM ret net total $ increase ($11.5-2.6) $8.9MM
- Credit for Rx copay increase -5.1
- Amount needed from premium 3.8
- Contracts, rate relationships:

	Contracts	Relative Cost
S	17,268	1.00
2P	25,423	2.00
F	28,281	3.00

- Monthly increase per contract:

  3.8MM/[12(17268+2x25423+3x28281)] = 2.07
- Rate Increases :

S	$2
2P	4
F	6

[009]

2001 Premium Increases
Aggregate Claim Projection

• 1999 Claims (L,A reduced to P,B benefit levels)		$343MM
• 2000 Proj Clms + Admin (x1.07x1.07)		393
• 2001 Proj Clms + Admin (x1.07)		421
• Increase 2000 to 2001	(421-393)	28
• Adjust to Eligible Charge	(28/.88)	32
• Employee, PM ret portion	(32 x.50)	16
• Savings		- 5
• EE, PM ret portion of Savings	(x.5)	- 2.5
• Ee, PM net total $ increase	($16-2.5)	13.5

[109]

2001 Premium Increases

Development of Monthly Rates

- Ee,PM ret net total $ increase $13.5 MM

- Contracts, rate relationships:

	Contracts	Relative Cost
S	16,458	1.00
2P	24,292	2.00
F	26,340	3.00

- Monthly increase per contract:
  13.5MM/[12(16458+2x24292+3x26340)]= 7.80; used 8
- Rate Increases :

S	$ 8
2P	16
F	24

[602]

Explanation of 2001 Premium Calculation

Following is an explanation of the calculations that were done to arrive at the premium increases for 2001.

1- 1999 Claims (L,A reduced to P, B benefit levels)	$343MM
2 -2000 Projected Claims + Admin (x1.07x1.07)	393MM
3 - 2001 Projected Claims + Admin (x1.07)	421MM
4 - Increase 2000 to 2001 (421-393)	28MM
5 - Adjustment to "eligible charges" (28/.88)	32MM
6 - Employee, Pre-Medicare Retiree share	16MM
7 - Estimated savings	- 5MM
8 - Employee, Pre-Medicare Retiree share of Savings	- 2.5MM
9 - Employee, Pre-Medicare Retiree Net Tot. Incr. (16-2.5)	$13.5MM

Contracts, Rate Relationships

Coverage	# Contracts	Relative Cost
Single	16,458	1.00
Two-person	24,292	2.00
Family	26,340	3.00

Monthly Increase/Contract

$13.5MM/[12(16458+2x24292+3x26340)] = $7.80; Used $8.00

Monthly Rate Increases - Option P

						2000		2001
Single	1x$8	=	$8	+		$21	=	$29
Two Person	2x$8	=	$16	+		$42	=	$58
Family	3x$8	=	$24	+		$63	=	$87

Explanations

General - The cost-sharing calculation is done for Active Employees and Pre-Medicare Retirees as a group since they have the same plan and premium structure (for Options P and B). A separate calculation is done later for Medicare Retirees.

Line 1 - 1999 Claims (the most recent year for which we have good data) are adjusted as if everyone was in options P and B. This allows a calculation which will result in the P and B premiums, but which has looked at all of the claims data ($343MM). (Note this is CLAIMS ONLY, not including Administrative costs)

Line 2 - This is actually two calculations. (And it is totally coincidental that the factor for Administrative costs (7%) is the same as the projected annual inflation rate (7%)). The 1999 adjusted claims are multiplied by 1.07 to add in the Administrative costs. Then this new number is multiplied by 1.07 to project claims and Admin into 2000 (remember, we do NOT have actual 2000 claims data yet!) ($393MM)

Line 3 - Now the projected 2000 Claims and Admin costs are projected into 2001. Note that we do NOT have to add in Administrative costs here, since they have already been accounted for and we are now projecting a combined number. ($421MM)

Line 4 - A simple subtraction to estimate the added Claims + Admin for 2001. ($28MM)

Line 5 - Unlike other companies, DuPont expresses cost sharing in terms of total plan costs. This means that in addition to payments made by the company, we must also consider what Employees and Pre-Medicare Retirees pay for co-payments, coinsurance and deductibles. These payments are not tracked in our data system, therefore we must estimate the total based on the information that is available. This information indicates that the total can be estimated by dividing the $28MM by 0.88 to arrive at ($32MM) in expected total additional costs for 2001.

Line 6 - With our policy of equal cost-sharing of increases, the Employee/PreMedicare retirees gross share is determined by dividing this number in half ($16MM).

Line 7 - Now we must make an adjustment for some expected savings for such things as rebates on prescription drugs and administrative simplifications. The estimate for this is (-$5MM)

Line 8 - Since employees and Pre-Medicare retirees share cost increases equally, they also share expected savings equally, so half of the $5MM is (-$2.5MM)

Line 9 - Subtract the $2.5MM for the Employee/Pre-Medicare Retiree share of the savings from the gross share to arrive at the net final portion of the increase that employees and Pre-Medicare Retirees must share. ($13.5MM)

NOTE: If the $5MM in estimated savings is subtracted from the $32MM estimated increase in Claims and Admin FIRST, the net amount that must be shared equally is $27MM, half of which is the same $13.5MM we wound up with on Line 9

Now we must determine how the $13.5MM will be collected from Employees and Pre-Medicare Retirees. Since we increased prescription drug co-payments last year and since our premiums are relatively low when we benchmark them, we decided that the $13.5MM increase would be all in the form of premiums.

We have traditionally set the premiums for Single coverage and then charged 2x that amount for Two-Person coverage and 3x for Family coverage. So we need a calculation that will determine the amount of the Single coverage increase.

Taking the number of contracts (or family units - also the number of Employees and Pre-Medicare Retirees together) in each coverage category, we show the Relative Cost of the premiums. (1x, 2x, 3x)

The Monthly Increase per contract (Single Coverage) is determined by dividing the $13.5MM by 12x the number of each type of contract times the Relative Costs of each in the calculation we see here – a sort of "weighted" calculation.

That results in an amount of $7.80, which was rounded to a whole dollar amount of $8.00. Multiplying $8 by 2x and 3X yields the Two Person and family rates of $16 and $24 respectively.

The final result is a premium structure of $29/$58/$87/mo. for the POS option "P". These premiums are also applied to Option B since we do not want to disadvantage Employees and Pre-Medicare retirees for whom we have not been able to provide a viable POS plan.

Premiums for Options L, A, and C are determined based on the benefit levels and historic experience of each Option.

2002 Single Premium Increase
Calculation of Monthly Increases
Actives+ PreMedicare Retirees
Dollars in Millions

• *2000 Claims*	$375
• *2001 Proj Clms + Adm (13.5% trend,$22 est adm)*	448
• *2002 Proj Clms + Adm (13.5% trend,$22 est adm)*	506
• *Increase from 2001 to 2002*	58
• *Estimated eligible charge (58/.887)*	65
• *Ee, PM retiree portion (65 x.50)*	32.5
• *Impact of plan changes(Ee,PM ret portion)*	-4.4
• *Ee, PM net increase*	28.1

- *Monthly increase per single contract:*
  28.1MM/[12(16,567+2x23,999+3x24,971)]=16.79 (use 16.75)
- *Contracts, Rate Relativities, 2002 Monthly Premium*

	Contracts	Relative Cost	Increase	Monthly Premium
S	16,567	1.00	$16.75	$45.75
2P	23,999	2.00	33.50	91.50
F	24,971	3.00	50.25	137.25

[607]

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August 13, 2004

Via E-mail (enclosures by regular mail)

Mark Schilling
President
PACE Local 2-786
2708 Chinchilla Drive
Wilmington, DE 19810

Via Fax

James L. Briggs
P.A.C.E. International Representative
P.A.C.E. International Union
Region 1
1069 Upper Mountain Road
Lewistown, NY 14092

Re: PACE Local 2-786 Information Request #14

Dear Messrs. Schilling & Briggs:

This is in response to your letter dated August 6, 2004, amplifying your original request dated July 14, 2004 relating to the issue of benefit proposals. We respond as follows:

REQUEST: "Please provide the following information for all bargaining unit employee's [sic] at the Edgemoor Plant: Employee name, date of birth, gender, zip code of residence & family tier status – in alignment."

RESPONSE: In order to protect the confidentiality of this personal information, we have not provided you with the names of the bargaining unit employees. However, the attached chart provides the remaining data that you have requested, "in alignment", *i.e.* gender, zip code of residence, date of birth and coverage tier.

We trust that this is responsive to your request. If you have any questions, please let me know.

Very truly yours,

Denise M. Keyser /pa

Denise M. Keyser

DMK/pa
cc: Kathleen Hostetler, Esquire (via fax/e-mail)

EXHIBIT R-23

Gender	Zip Code	Birth Dt	Coverage Tier
M	19709	19450715	No Coverage
M	08069	19670729	No Coverage
M	08078	19460131	No Coverage
M	19317	19580423	No Coverage
M	19701	19470711	No Coverage
M	19805	19650617	No Coverage
M	19709	19550129	No Coverage
M	19806	19690702	No Coverage
M	19808	19660823	No Coverage
M	19810	19640819	No Coverage
M	19702	19580819	You + Family
M	08069	19511021	You + Family
M	19382	19520206	You + Family
M	19711	19480214	You + Family
M	08070	19580830	You + Family
M	08069	19530829	You + Family
M	08079	19650204	You + Family
M	19701	19681120	You + Family
M	19078	19670102	You + Family
M	19810	19530108	You + Family
M	19702	19500831	You + Family
M	19711	19650716	You + Family
M	19952	19680213	You + Family
M	19802	19450818	You + Family
M	19804	19500629	You + Family
M	19702	19520709	You + Family
M	19713	19511213	You + Family
M	19720	19550222	You + Family
M	19703	19540426	You + Family
M	19804	19560127	You + Family
M	19720	19750304	You + Family
M	19720	19751120	You + Family
M	19711	19450919	You + Family
M	19702	19470127	You + Family
M	19803	19510406	You + Family
M	19803	19490601	You + Family
M	19801	19530819	You + Family
M	19701	19540313	You + Family
F	19809	19530924	You + Family
M	19810	19561101	You + Family
F	19720	19560827	You + Family
M	19701	19540323	You + Family
M	19702	19700227	You + Family
M	19720	19621031	You + Family
M	19701	19570823	You + Family
M	21921	19650813	You + Family
M	19953	19580920	You + Family
M	19702	19660713	You + Family

F	19809	19580104	You + Family
F	19810	19550814	You + Family
M	19709	19471028	You + One
M	19804	19490127	You + One
M	19720	19710824	You + One
M	08343	19520519	You Only
M	19317	19500605	You Only
M	19720	19490613	You Only
M	19805	19530822	You Only
M	19711	19570808	You Only
F	19720	19510718	You Only
M	08062	19470205	You + One
M	19808	19690207	You + One
M	19808	19501012	You + One
M	08070	19471106	You + One
M	08070	19500122	You + One
M	08070	19601102	You + One
M	19063	19460829	You + One
F	19977	19541013	You + One
M	19703	19480627	You + One
M	19078	19460916	You + One
M	19720	19510608	You + One
M	19720	19460815	You + One
M	21901	19440806	You + One
M	19014	19470805	You + One
M	19810	19460907	You + One
M	21921	19471031	You + One
M	19720	19591114	You + One
M	21921	19530121	You + One
M	19350	19470315	You + One
M	19701	19541005	You + One
M	19805	19510210	You + One
M	19805	19540513	You + One
M	19701	19511112	You + One
M	19720	19520426	You + One
M	19711	19601130	You + One
M	19709	19460318	You + One
M	19720	19550910	You + One
M	19720	19480907	You + One
M	19904	19491107	You + One
M	19734	19461217	You + One
M	19805	19490218	You + One
M	19808	19480707	You + One
F	19810	19490527	You + One
M	19804	19511002	You + One
M	19711	19480619	You + One
M	19720	19511209	You + One
M	19720	19530815	You + One
M	19701	19560129	You + One
M	19809	19540716	You + One

F	19720	19561009	You + One
M	21921	19510824	You Only
M	19810	19510612	You Only
M	19808	19470629	You Only
M	19809	19510517	You Only
M	19709	19511214	You Only
M	19805	19470125	You Only
M	19809	19540421	You Only
F	19711	19470825	No Coverage
M	19804	19630908	You + Family
M	19701	19550404	You + One
M	19977	19540308	You + One
F	19711	19560610	You Only
M	08104	19501128	You Only
M	19809	19490308	You Only
M	19317	19470909	You Only
M	19809	19470129	You Only
M	19804	19530219	You Only
F	19703	19490905	You Only
M	19702	19510209	You Only
M	19713	19510427	You Only
M	19703	19520930	You Only
M	19701	19740125	You Only
M	19810	19471012	You Only
M	19702	19470509	You Only
M	19802	19471228	You Only
M	19802	19500304	You Only
M	19701	19490726	You Only
F	19720	19550702	You Only
M	19809	19541004	You Only
F	19802	19570101	You Only
M	19720	19691126	You Only
M	08070	19780913	You Only
M	08098	19620904	No Coverage
M	08094	19540605	You + One
M	19720	19720912	You + Family
M	19363	19570416	No Coverage

2005 DuPont Active Employee Monthly COBRA Rates

Coverage Tier	Medical Plan Options					
	POS	Indemnity	Consumer Choice	Local PPO	High Deductible PPO	HMO
Single	$ 338.13	$ 338.13	$ 321.05	$ 355.22	$ 311.61	Call DuPont Connection for rates
Employee + Spouse	$ 659.43	$ 659.43	$ 626.03	$ 692.84	$ 607.67	
Employee + Child(ren)	$ 557.94	$ 557.94	$ 529.64	$ 586.25	$ 514.08	
Family	$ 996.80	$ 996.80	$ 946.31	$1,047.29	$ 918.51	

Coverage Tier	Dental Plan Options	
	Standard	High
Single	$ 24.23	$ 57.38
Employee + Spouse	$ 44.88	$ 106.08
Employee + Child(ren)	$ 53.30	$ 100.47
Family	$ 91.80	$ 168.30

Coverage Tier	Vision Plan
	VBA
Single	$ 7.40
Employee +	$ 12.95
Employee +	$ 12.95
Family	$ 18.77

PAPER, ALLIED-INDUSTRIAL, CHEMICAL and ENERGY
WORKERS INTL. UNION
PACE LOCAL 2-786
P. O. Box 9634
Edge Moor, DE 19809

Mark A. Schilling, President
Thomas M. Campbell, Vice President
Carole E. Price, Secretary
Karen L. West, Treasurer

October 13, 2004

VIA FACSIMILE

Denise M. Keyser, Esq.
Ballard Spahr Andrews & Ingersoll, LLP
Plaza 1000-Suite 500
Voorhees, New Jersey 08043-4636

RE: E.I DuPont de Nemours and Co., Inc. and PACE, Local 2-786

Dear Ms. Keyser:

This letter is a reply to your partial responses, dated August 12, and October 11, to the Union's request for information, dated July 14, which was submitted as a result of the Employer's withdrawal on July 13 of its Beneflex proposal and the necessity for the Union to propose benefit proposals for the successor contract. Furthermore, this information is now necessary and relevant because the Employer announced on October 11, 2004, future changes to the Beneflex plan. These recently announced changes will impact the comparison of the Union's benefit proposal and the Beneflex plan.

1. Please provide the demographics of the bargaining unit. Specifically, please provide the name, birth date and year, and gender of each bargaining unit employee at the Edge Moor facility.

   EMPLOYER RESPONSE: *The Union was handed this information across the bargaining table at the parties' Tuesday, July 20, 2004 negotiation session.*

   UNION REPLY: The Union is reviewing the Employer's response.

2. Please provide the hard claims paid for the last 5 years for **each** bargaining unit employee at the Edge Moor facility for **each** of the following benefits:
   a. Medical;
   b. Dental;
   c. Vision;
   d. Prescription;

e. Employee Life Insurance;
f. Dependent Life Insurance;
g. Accidental Death Insurance.

EMPLOYER RESPONSE: *To the extent that PACE is seeking individualized information regarding health and welfare benefits received by bargaining unit employees, your request raises significant confidentiality concerns under both the National Labor Relations Act and the Health Insurance Portability and Accountability Act. DuPont is prepared to discuss these concerns with the Union in an attempt to reach a reasonable and proper accommodation of the Union's request for this personal and sensitive medical information for bargaining unit employees.*

For (a) Medical, (b) Dental and (d) Prescription, listed below is aggregate claims data for 2001, 2002 and 2003 for the current bargaining unit members at the Edge Moor Plant.

	2001: #Claims/$Paid	*2002: #Claims/$Paid*	*2003: #Claims/$Paid*
(a) Medical	*4874/$452,257*	*4294/$399,096*	*5321/$638,871*
(b) Dental	*1628/$88,684*	*1561/$96,339*	*1330/$83,947*
(d)Prescription	*3434/$180,985*	*2774/$140,949*	*2870/$192,884*

It is our understanding that these aggregate costs, coupled with the demographic data previously produced for the Union, is all that is typically needed for a third-party to design and cost-out a benefit plan.

With respect to (c) Vision, (f) Dependent Life Insurance and (g) Accidental Death Insurance, these are insurance programs offered by third-party vendors to DuPont employees. Employees purchase coverage directly from the insurer, with the Company making no contributions towards the cost of these benefits. As a result, the Company maintains no records responsive to your request with respect to vision benefits, dependent life insurance benefits and accidental death insurance benefits.

With respect to (e) Employee Life Insurance, as you know from the Plant's responses to previous Union requests, the beneficiaries of bargaining unit employees are eligible for a life insurance benefit equal to 1x the employee's normal annual earnings. This employee life insurance benefit is provided by the Company and paid out of the Plant's ordinary operating income at the time of death. Over the course of the last five years, no bargaining unit employee at Edge Moor has died, so no employee life insurance payments have been made.

UNION REPLY: PACE is not seeking information that identifies individuals by name, social security number or any other identifying characteristic. Rather, as described in the original question, PACE is seeking information regarding the actual claims paid for each bargaining unit employee and their dependents **at the Edge Moor facility** for the benefits identified. Please note that information by facility site was provided by DuPont for the Yerkes facility, without a confidentiality agreement, in February of 2001.

This information can be de-identified in accordance with applicable law provided PACE is able to ascertain at least the procedure code and the amount paid for

each claim at the facility broken down by the type of benefits included in the original question.

To fully understand the current arrangements regarding the Vision, Dependent Life Insurance and Accidental Death Insurance Plans, please provide PACE with copies of the contracts between DuPont and the vendors that provide these benefits to the Edge Moor employees.

In addition, in response to DuPont's announcement on October 11 of future changes to the Beneflex plan, in order for the Union to analyze the 2005 changes and compare these changes to our health care proposals, please provide the following:
(a) The total premium cost share paid by bargaining unit employees at the Edge Moor site for the years 2001, 2002 and 2003;
(b) The total co-insurance paid by bargaining unit employees at the Edge Moor site for the years 2001, 2002 and 2003; and,
(c) The total co-pays paid by bargaining unit employees at the Edge Moor site for the years 2001, 2002 and 2003.

3. Please provide all claims reports or utilization reports of any kind (including but not limited to a prescription drug provider, claims processor, or dental provider) for the Edge Moor site for the last five years.

EMPLOYER RESPONSE: *We would appreciate clarification as to what the Union means by the terms "claims reports" and "utilization reports." Nevertheless, the Company does not receive any claims or utilization reports from our plan administrators by site. However, we believe that our response to Item #2, above, addresses this request.*

UNION REPLY: Your response to Item #2 does not address our request. Please provide copies of all reports that are provided to DuPont by any prescription drug provider, claims processor or dental provider, that identifies in any way the claims that have been paid for employees at the Edge Moor site for the last five years. This information can be de-identified in accordance with applicable law as described in our response to Item #2 above.

4. Please provide all Beneflex Plan records maintained for the Edge Moor location.

EMPLOYER RESPONSE: *This request is vague and unintelligible. If the Union seeks every record in any way relating to the Beneflex plan anywhere within the corporation regarding the Edge Moor location, it is unreasonably overbroad and burdensome. We would appreciate clarification from the Union as to the data that you actually are seeking. (Emphasis in original.)*

UNION REPLY: We do not understand your response. If the production of the records we have requested is "unreasonably overbroad and burdensome" then please provide a list of the types of records, documents and/or files DuPont maintains regarding the Beneflex Plan for the Edge Moor location and we determine what records we require from that list.

5. For each Beneflex Plan year for the last 5 years through the present date, please identify the dollar amount of all benefit claims paid by the Beneflex Plan. Please provide the same information for the Edge Moor Plant only.

EMPLOYER RESPONSE: *Attached please find the "Summary Annual Reports" issued to all participants in the Beneflex Plan for 1999-2002. The Report for 2003 is not yet available. This information is not separately maintained by DuPont on a site-by-site basis. See also, the response to Item #2, above.*

UNION REPLY: The SAR you have attached is not responsive to our request since it refers to "premiums paid" not "claims paid." We renew our request as originally stated. In addition, having reviewed the SAR, we request all of the documents and information referred to under the section of the SAR entitled "Your Rights to Additional Information" with respect to all of the plans described in the SAR.

In addition, regarding the request to provide the information for the Edge Moor facility, please note that information by facility site was provided by DuPont for the Yerkes facility, without a confidentiality agreement, in February of 2001.

6. (SAME AS ITEM 7) For each Beneflex Plan year 1998 through 2003, please identify the dollar amount of the following expenses for (i) the Edge Moor Plant only and (ii) also for the entire Plan:
   a. Benefit payments made directly to either participants or beneficiaries pursuant to the Plan.
   b. Payments made to insurance carriers or other vendors for the provision of benefits under the Plan.
   c. Salaries or other allowances for personnel performing services for the Plan.
   d. Accounting fees related to Plan operations or administration.
   e. Actuarial fees related to Plan operations or administration.
   f. Contract administrator fees for services related to the Plan.
   g. Legal fees for services related to the Plan.
   h. Other Plan administrative expenses not identified above (please identify and provide amount).

EMPLOYER RESPONSE: *Your Union made this identical request on December 16, 2002, and the Plant responded to each of these questions for the years 1998 through 2001. We assume that your Union maintained this information in its possession. If not, please let me know and arrangements can be made to resubmit the same data to you again.*

For the years 2002 and 2003, we provide the following:

a. We do not have claims data broken out as to how much is paid to participants or beneficiaries. Additionally, for the Edge Moor Plant only, we direct your attention to the response to Item #2, above, and Item #6(f) below. For the entire Plan, we direct your attention to the response to Item #5, above, and Item #6(f) below.

b. See response to #2 above for claims data and 6(f) for administrative fees.

c. Costs incurred for DuPont employees performing services for the Plan are not included in the cost of the Plan. As such, this request for information regarding non-bargaining unit personnel is not relevant.

d. There are no third-party accounting fees related to Plan operations and administration.

e. There are no charges associated with actuarial services provided by third-party vendors.

f. Please clarify what is intended by the term "contract administrator fees." In any event, the total administrative costs for the operation of the Plan (in the millions of dollars) will be provided in the near future.

g. There are no charges associated with 3rd party legal services with regard to operation and administration of the Plan. Costs incurred for DuPont employees performing services for the Plan are not included in the cost of the Plan. As such, this request for information regarding non-bargaining unit personnel is not relevant.

h. N/A.

UNION REPLY: Regarding your response to (a) and the Union's request to provide the information for the Edge Moor facility, please note that information by facility site was provided by DuPont for the Yerkes facility, without a confidentiality agreement, in February of 2001. In addition, in 2004, DuPont announced that it was separating active employees from pre-Medicare and Medicare eligible retirees for purposes of the Beneflex Plan. Therefore, beneficiaries must be tracked separately. In light of this fact, please explain your response.

Please identify the people referred to in your response to (c) and provide their job titles. Also, the Union requested "Salaries or other allowances for personnel performing services for the Plan", which is not limited to DuPont employees. Please provide the requested information.

In response to your questions regarding our request in (f), "contract administrator fees" are defined as any fees paid to a vendor pursuant to a contractual arrangement. Your response, dated October 11, provided an aggregate number. Please provide **the contract administrator fees by vendor.**

[ITEM 7: SAME AS ITEM 6]

8. For each Beneflex Plan year 1998 through 2003, please identify the dollar amount of the costs referred to in Item 6 (same as 7) that was paid by DuPont versus the dollar amount that was paid by employees represented by the Union at the Edge Moor Plant.

EMPLOYER RESPONSE: *See Item #6(a), above. Cost sharing data is not tracked by site.*

UNION REPLY: For each Benefit Plan year 1998 through 2003, please identify the dollar amounts paid by DuPont that make up its percentage share for the Beneflex plan for the Edge Moor site.

9. Please identify each item that is included in calculating the cost referred to in **Item 8** for each year, 1998 through 2003 and provide the corresponding dollar amount of that item.

EMPLOYER RESPONSE: *This request is vague and unintelligible. It is also unreasonably overbroad and burdensome. We would appreciate clarification from the Union as to the data you actually are seeking.*

UNION REPLY: If the production of the records we have requested is "unreasonably overbroad and burdensome" then please provide a list of the types of the costs paid by DuPont for the Beneflex Plan for the Edge Moor location and we will determine what costs we require from that list.

10. For each Plan year 1998 through 2003, please identify and describe the assumptions (including actuarial assumptions, medical inflation trend factors, industry standards) used to determine premiums, co-payments or deductibles for each of the benefit plans offered by the Plan. In describing these assumptions please explain the specific effect each assumption had on premium calculations. For example "in 1999 we used a medical inflation trend factor of 8% and a prescription drug inflation trend factor of 4% which in combination resulted in an increase in premiums for 1999 of - % and an increase in co-payments of -%."

EMPLOYER RESPONSE: *Medical plan rate calculation sheets for 1999 through 2002, showing how premium increases were determined, were previously provided to your Union on February 26, 2003. Nevertheless, we have provided them to you again, as attached. The rate calculation for 2001 includes a brief explanation for each line on the sheets. Beginning in 2003, the Company adjusted the cost sharing policy. The new policy was communicated to employees in the fall of 2002 as follows: "In the future, we will look at our total costs and share them between the Company and employees at a competitive level. For 2003, we expect that this will result in sharing overall medical costs at about 70% for the Company and 30% for you. We will continue to monitor this approach over time."*

There are no premiums for the standard Dental option. The premiums for the "high dental option" are based upon experience and cost of the high option as compared with experience and cost related to the standard option.

Because vision, dependent life insurance and accidental death insurance benefits are provided by third-party vendors, DuPont has no involvement in the setting of those premiums and has no information responsive to your request.

With respect to employee life insurance, because this benefit is paid out of on-going Plant assets, there are no premiums, co-payments or deductibles computed for this benefit.

UNION REPLY: This is not responsive to our question. You have not identified or described the assumptions (including actuarial assumptions, medical inflation trend factors, and/or industry standards) that were used to determine premiums, co-payments or deductibles for each of the benefit programs offered by the Plan. We reiterate our original request.

11. For each Plan year 1998 through 2003, please identify the dollar value of claims incurred but not reported ("IBNR") that were used or relied on to determine premium amounts, co-payments or deductibles and explain how these dollar values were determined.

EMPLOYER RESPONSE: *The respective amounts for IBNR for active employees and retirees (stated in the millions of dollars) are as follows:*

1998	*$43MM*
1999	*$11MM*
2000	*$42MM*
2001	*$59MM*
2002	*$79MM*
2003	*$71MM*

These preceding numbers are based on historic run out and standard actuarial methodology.

UNION REPLY: Please explain what you mean by "historic run out" and "standard actuarial methodology" and provide examples to support your explanation.

Very truly yours,

Mark Schilling
President, PACE Local 2-786

James L. Briggs
PACE International Representative

cc: Kenneth O. Test, Region III, Vice President & Director, via fax
John Barcellona, PACE International Representative, via fax
Bargaining Committee, Local 2-786
Kathleen Hostetler, Esq., Counsel for PACE
Allison Madan, Esq., Slevin & Hart

Suflas, Steven W. (VH)

From: Michele_Ondrick@aoncons.com
Sent: Tuesday, August 31, 2004 2:05 PM
To: Suflas, Steven W. (VH)
Cc: Mike_Casey@aoncons.com; Mark_Scarafone@aoncons.com
Subject: BCBS of Delaware Rates [Virus Checked]
Attachments: DuPont Edgmoor POS.doc; DuPont Edgmoor EPO.doc; DuPont Edgemoor rates.xls

Steven,
Just wanted to get these out to you. The following are the rates we received from BCBS of Delaware for the Edge Moor plant. Please let us know if you have any questions.

Michele Ondrick
Associate
Aon Consulting
Tel: (610) 834-3353
Fax: (610) 834-2297

Thanks, folks, for your patience. Here is my POS and EPO quote for the unnamed union group. The claims experience was relatively high, so our book rates came up a little. Even so, the group is just 20% credible. Let me know of any questions.

Rob Jordan
BCBSD
-----Original Message-----
From: Michele_Ondrick@aoncons.com [mailto:Michele_Ondrick@aoncons.com]
Sent: Monday, August 16, 2004 2:15 PM
To: Rjordan@bcbsde.com
Cc: Mark_Scarafone@aoncons.com; Mike_Casey@aoncons.com
Subject: RFP [Virus Checked]

Rob,
The following information is for the RFP we discussed this afternoon.

Claims Information:	**2001**	**2002**	**2003**
Medical	$452,257	$399,096	$638,871
Prescription	$180,985	$140,949	$192,884

If you have any questions, please don't hesitate to give me a call.
Thanks!

Michele Ondrick
Associate
Aon Consulting
Tel: (610) 834-3353
Fax: (610) 834-2297

Michele Ondrick
Associate
Aon Consulting
Tel: (610) 834-3353
Fax: (610) 834-2297

CALCULATION OF RATES FOR PROSPECTIVE

GROUP: Union Group

FOR PERIOD: 1/1/05 TO 12/31/2005

The group may select one set of rates from the following:

	Point of Service with $7/$20 ($16/$45 Mail Order) or 30% MAC C Drug Card			**EPO with $7/$20 ($16/$45 Mail Order) or 30% MAC C Drug Card**		
	#	RATES	MONTHLY PREMIUM	#	RATES	MONTHLY PREMIUM
INDIVIDUAL:	34	$408.68	$13,895.11	34	$392.33	$13,339.33
SUB/CHILD(REN):	6	$653.90	$3,923.37	6	$627.74	$3,766.43
SUB/SPOUSE:	41	$939.97	$38,538.65	41	$902.36	$36,996.94
FAMILY:	41	$1,144.31	$46,916.58	41	$1,098.54	$45,040.17
	122		$103,273.70	122		$99,142.88

These rates assume a full waiver on pre-existing conditions.
These rates assume no commission.
These rates assume dependent coverage to age 19 and student coverage to age 25.
For a 1/1/05 effective date, ALL enrollment paperwork must be at BCBSD by 12/15/04.

* See attached benefit description for POS.
** See attached benefit description for EPO.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 4

E.I. du Pont de Nemours and Company	:	
	:	NLRB Case No.: 4-CA-33620
and	:	
	:	
Paper, Allied-Industrial, Chemical and Energy Workers International Union and its Local 2-786	:	

STIPULATED FACTS

Respondent E.I. du Pont de Nemours and Company, Edge Moor facility ("Respondent" or "DuPont"), Counsel for the General Counsel for the National Labor Relations Board, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ("USW") (formerly the Paper, Allied-Industrial, Chemical and Energy Workers International Union ("PACE")) and its Local 4-786 (formerly PACE Local 2-786 ("Local Union")) (collectively the "Union") hereby stipulate to the following undisputed facts. By submitting these stipulated facts, all parties reserve the right to object to individual facts on the grounds of relevance or for other proper purposes.

1. The DuPont Edge Moor Union ("DEMU"), the Union's predecessor, represented production and maintenance employees at DuPont's Edge Moor, Delaware site for approximately sixty years. In May, 1998, DEMU voted to affiliate with OCAW, and became OCAW Local 8-786. In January 1999, OCAW merged with the United Paper Workers International Union to become PACE, with the Local becoming PACE Local 2-786. In April 2005, PACE merged with the United Steelworkers of America and became USW, with the Local Union becoming USW Local 4-786.

2. DuPont and DEMU were parties to various collective bargaining agreements from at least 1987 until 2000 which continued year to year unless re-opened by one of the parties 60

days prior to the expiration date of the contract. Following negotiations, in 2000, Respondent and PACE and its Local 2-786 entered into a Collective Bargaining Agreement with a specified term. The parties' most recent Collective Bargaining Agreements ran from 1987 until May 31, 2000 and from June 1, 2000 until May 31, 2004. True and accurate copies of these Agreements are attached as "**Exhibits 1 and 2**", respectively.

3. The BeneFlex Flexible Benefits Plan (the "BeneFlex Plan") is a self-insured, cafeteria style benefits plan, which includes a variety of benefits options in addition to comprehensive health care coverage, such as dental coverage, vision coverage, a vacation "buy back" program, a flexible healthcare spending account, personal financial planning services, and life insurance. Most benefits provided under the BeneFlex Plan are self-insured, meaning that the cost for all claims made and administrative expenses incurred are paid out of funds contributed by DuPont out of its corporate operating budget and participating employees. There are annual enrollment periods in the Fall immediately preceding the year in which the changes will take effect, at which time covered employees and employees eligible to enroll elect the level of health care coverage desired and other benefit options. The DuPont BeneFlex Medical Care Plan (EIN51-0014090, Plan #503) ("BeneFlex Medical") is a self-insured medical care option encompassed within the BeneFlex Plan. All DuPont sites in the United States participate in the BeneFlex Plan. Attached as "**Exhibits 3A, 3B, 3C and 3D**" are true and accurate copies of the Plan documents for the BeneFlex Plan for the period 1993 to the present, as periodically revised. Attached as **Exhibit 4A** is a true and accurate copy of the 2004 Plan documents for BeneFlex Medical. Attached as **Exhibits 4B-4L** inclusive, are true and accurate copies of the face page and Article XX of the BeneFlex Medical Plan for the years 1994 through 2003.

4. The cost to employees for the BeneFlex Medical Plan is comprised of two components. First are co-pays and deductibles paid by employees and their beneficiaries directly

to health care providers that are routinely a part of modern medical benefit plans generally. Second are contributions paid by employees by way of payroll deduction towards the overall cost for the BeneFlex Medical Plan, which are referred to as "premiums".

5. DuPont annually reviews the BeneFlex Plan, and the benefits provided through the BeneFlex Plan may be modified based upon employee usage and demand, changes in applicable laws or regulations, benchmarking against benefits offered by other major employers, and other relevant considerations.

6. The BeneFlex Plan was implemented corporate-wide within Respondent's U.S. Region in 1991, although its application was delayed at several sites pending the outcome of collective bargaining.

7. Respondent originally presented the BeneFlex Plan to the DEMU in 1992, but the bargaining unit membership rejected participation in the Plan at that time. Following subsequent negotiations with DEMU, the BeneFlex Plan, including BeneFlex Medical, was accepted by the DEMU at Edge Moor in August of 1993. The parties negotiated and executed a Memorandum of Understanding ("MOU") to supercede the language of Article XIV of the 1987 collective bargaining agreement and to memorialize the DEMU's agreement to be bound by the terms of the BeneFlex Plan.

8. Since inception, the plan documents contain an express and specific reservation of management rights at Article XIII in the BeneFlex Plan and at Article XX in the BeneFlex Medical Care Plan:

> The Company reserves the sole right to change or discontinue this Plan in its discretion provided, however, that any change in price or level of coverage shall be announced at the time of annual enrollment and shall not be changed during a Plan Year unless coverage provided by an independent, third-party provider is significantly curtailed or decreased during the Plan Year[.]

9. During the 1993 negotiations over the adoption of the BeneFlex Plan at Edge Moor, the DEMU agreed that, consistent with the terms of the BeneFlex Plan and the BeneFlex Medical Care Plan (collectively "the Plans") plan documents, Respondent would have the right to make changes to the Plans without bargaining with the DEMU, and that any such changes would be made on a U.S. Region-wide basis. The DEMU agreed and accepted the Plans.

10. An exception to Respondent's application of changes on a U.S. Region-wide basis existed from 1997 to 2001 at Respondent's Tonawanda ("Yerkes"), New York facility, pursuant to a Settlement Agreement negotiated with the NLRB's Region 3 office in Cases 3-CA-16762, 18379, 18864, 19927 and 20181. The Settlement Agreement specifically provided that the contribution rates for premium payments for the BeneFlex Plan made by bargaining unit members represented by the Buffalo Yerkes Union would be held at 1996 levels until good faith impasse or agreement was reached on a successor contract in subsequent collective bargaining. A true and accurate copy of the Settlement Agreement is attached as "**Exhibit 5**". From 1996 through 2002, all other modifications to the BeneFlex Plan that were implemented nationally, including changes to employee co-pays and deductibles, but not for increases in premium payments that were elsewhere the responsibility of employees, were also applied to the bargaining unit members at the Yerkes plant.

11. The BeneFlex Plan was implemented at DuPont's Edge Moor facility for the DEMU bargaining unit effective January 1, 1994. At that time, a Collective Bargaining Agreement was in effect.

12. In October, 1994, Respondent and DEMU met, and Respondent then reviewed the upcoming changes to the BeneFlex Plan with the DEMU. These changes were also communicated with Edge Moor employees through Respondent's "Plain Talk", a U.S. Region-wide publication used by DuPont to communicate any changes to the BeneFlex Plan for the

upcoming calendar year. The 1994 "Plain Talk" was subsequently delivered to all DuPont U.S. Region employees, including the Edge Moor employees represented by DEMU. A true and accurate copy of the 1994 "Plain Talk" is attached as "**Exhibit 6**".

13. On January 1, 1995, Respondent implemented the changes to the Plans listed below. At that time, a Collective Bargaining Agreement between DEMU and Respondent was in effect. The terms of the BeneFlex Plan and the BeneFlex Medical Care Plan permitted DuPont to make changes to the Plans. Respondent did not offer to negotiate over these changes, nor did DEMU seek to bargain over these changes:

1995 Changes

◊ Changes to the managed care plans and premiums

◊ Changes in co-payments and deductibles

These changes were summarized in the 1994 "Plain Talk" ("**Exhibit 6**").

The DEMU did not file any unfair labor practice charges or any grievances contesting the DuPont's right to make these changes.

14. In October, 1995, Respondent and DEMU met, and Respondent then reviewed the upcoming changes to the BeneFlex Plan with the DEMU. These changes were also communicated with Edge Moor employees through Respondent's "Plain Talk." The 1995 "Plain Talk" was subsequently delivered to all DuPont U.S. Region employees, including the Edge Moor employees represented by DEMU. A true and accurate copy of the 1995 "Plain Talk" is attached as "**Exhibit 7**".

15. On January 1, 1996, Respondent implemented the changes to the Plans listed below. At that time, a Collective Bargaining Agreement between DEMU and Respondent was in effect. The terms of the BeneFlex Plan and the BeneFlex Medical Care Plan permitted DuPont to make changes to the Plans. Respondent did not offer to negotiate over these changes, nor did DEMU seek to bargain over these changes:

1996 Changes

- ◊ Changes to pharmacy benefit, including mail service, and discounts for generic drugs
- ◊ Implementation of a new financial planning option (AycoAdvi$or)
- ◊ Increase in premiums for dependant life insurance
- ◊ Increase in premiums for vision coverage; enhancement of Vision Care Plan benefits via discounts available from network providers
- ◊ Increase in premiums for Dental Option A
- ◊ Changes to EAP (employee assistance plan)
- ◊ Changes to Targeted Nutrition Counseling

These changes were summarized in the 1995 "Plain Talk" ("**Exhibit 7**").

The DEMU did not file any unfair labor practice charges or any grievances contesting the DuPont's right to make these changes.

16. In August, 1996, Respondent and DEMU met, and Respondent then reviewed with DEMU the changes to the BeneFlex Plan for the upcoming calendar year, including any changes or premium increases for BeneFlex Medical. These changes were also communicated with Edge Moor employees through Respondent's "Plain Talk". The 1996 "Plain Talk" was subsequently delivered to all DuPont U.S. Region employees, including the Edge Moor employees represented by DEMU. A true and accurate copy of the 1996 "Plain Talk" is attached as "**Exhibit 8**".

17. On January 1, 1997, Respondent implemented the changes to the Plans listed below. At that time, a Collective Bargaining Agreement between DEMU and Respondent was in effect. The terms of the BeneFlex Plan and the BeneFlex Medical Care Plan permitted DuPont to make changes to the Plans. Respondent did not offer to negotiate over these changes, nor did the Union seek to bargain over these changes:

1997 Changes

◊ Increase in premiums for medical coverage

◊ Changes in rules for spousal medical coverage

◊ Decrease in premiums for vision coverage

◊ Increase in premiums for Dental Option A

◊ Changes to EAP (employee assistance plan)

These changes were summarized in the 1996 "Plain Talk" ("**Exhibit 8**").

The DEMU did not file any unfair labor practice charges or any grievances contesting the DuPont's right to make these changes.

18. In October, 1997, Respondent and DEMU met, and Respondent then reviewed the upcoming changes to BeneFlex with the DEMU. These changes were also communicated with Edge Moor employees through Respondent's "Plain Talk". The 1997 "Plain Talk" was subsequently delivered to all DuPont U.S. Region employees, including the Edge Moor employees represented by DEMU. A true and accurate copy of the 1997 "Plain Talk" is attached as "**Exhibit 9**".

19. On January 1, 1998, Respondent implemented the changes to the Plans listed below. At that time, a Collective Bargaining Agreement between DEMU and Respondent was in effect. The terms of the BeneFlex Plan and the BeneFlex Medical Care Plan permitted DuPont to make changes to the Plans. Respondent did not offer to negotiate over these changes, nor did DEMU seek to bargain over these changes:

1998 Changes

◊ Increase in premiums for medical coverage

◊ Changes to coverage for non-network mental health services

◊ Changes in rules regarding spousal medical coverage

◊ Increase in premiums for Dental Option A

◊ Increase in premiums for vision coverage

◊ New Financial Planning Option implemented (Option D)

These changes were summarized in the 1997 "Plain Talk" ("**Exhibit 9**").

DEMU did not file any unfair labor practice charges or any grievances contesting DuPont's right to make these changes.

20. In October, 1998, Respondent and the Union met, and Respondent then reviewed the upcoming changes to the BeneFlex Plan for 1999 with the Union. These changes were also communicated with Edge Moor employees through Respondent's "Plain Talk". The 1998 "Plain Talk" was subsequently delivered to all DuPont U.S. Region employees, including the Edge Moor employees represented by the Union. A true and accurate copy of the 1998 "Plain Talk" is attached as "**Exhibit 10**".

21. On January 1, 1999, Respondent implemented the changes to the Plans listed below. At that time, a Collective Bargaining Agreement between the Union and Respondent was in effect. The terms of the BeneFlex Plan and BeneFlex Medical Care Plan permitted DuPont to make changes to the Plans. Respondent did not offer to negotiate over these changes, nor did the Union seek to bargain over these changes:

1999 Changes

◊ Increase in premiums for medical coverage

◊ Reduction in deductibles for medical care Options A and B

◊ Modification to prescription drug benefits and coverage, including new coverage for contraceptives

◊ Changes in beneficiary payment methods for various life insurances and accidental death benefits

◊ Increase in premiums for Dental Option A

◊ Changes in dental claim review procedures

◊ Changes in rules regarding spousal coverage

◊ Increase in premiums for life insurance

◊ Increase in premiums for dependant life insurance

◊ Decrease in premiums for vision coverage

These changes were summarized in the 1998 "Plain Talk" ("**Exhibit 10**"), as well as in "**Exhibit 11**", which is a true and accurate copy of the 1999 Notice of Material Modifications for the BeneFlex Plan.

The Union did not file any unfair labor practice charges or any grievances contesting DuPont's right to make these changes.

22. On October 11, 1999, Respondent and the Union met to review the upcoming changes to the BeneFlex Plan for 2000, and the Union was presented with a copy of Respondent's 1999 "Plain Talk". The 1999 "Plain Talk" was subsequently delivered to all DuPont U.S. Region employees, including the Edge Moor employees represented by the Union. A true and accurate copy of the 1999 "Plain Talk" is attached as "**Exhibit 12**".

23. During its discussions with the Union on October 11, 1999, Respondent again expressed that it had the right to alter and modify BeneFlex Plan coverages and costs pursuant to the reservation of rights language set out in the Plans documents.

24. On January 1, 2000, Respondent implemented the changes to the Plans listed below. At that time, a Collective Bargaining Agreement between the Union and Respondent was in effect. The terms of the BeneFlex Plan and the BeneFlex Medical Care Plan permitted DuPont to make changes to the Plans. Respondent did not offer to negotiate over these changes, nor did the Union seek to bargain over these changes:

2000 Changes

◊ Changes in design and administration of BeneFlex life insurance plans

◊ Reduction in most premiums for BeneFlex life insurance plans

◊ Changes in prescription drug co-payments

- ◊ Increase in premiums for BeneFlex Medical Options A, B, L, and P
- ◊ Changes in rules regarding spousal medical coverage
- ◊ Decrease in premiums for vision coverage
- ◊ Enhancements to Vision Care Plan coverage (increase in frame allowances and full coverage for prescription lens tints)

These changes were summarized in the 1999 "Plain Talk" ("**Exhibit 12**"), as well as in "**Exhibit 13**", which is a true and accurate copy of the 2000 Notice of Material Modifications for the BeneFlex Plan.

The Union did not file any unfair labor practice charges or any grievances contesting DuPont's right to make these changes.

25. A successor collective bargaining agreement was negotiated and went into effect on June 1, 2000 ("**Exhibit 2**"). The parties added a specific reference to the BeneFlex Plan to that Agreement; the applicable language from Article IX is as follows:

> Section 1. All existing privileges heretofore enjoyed by the employees in accordance with the following Industrial Relations Plans and Practices of the Company shall continue, subject to the provisions of such Plans to such rules, regulations and interpretations as existed prior to the signing of this Agreement, and to such modifications thereof as may be hereafter adopted generally by the Company to govern such privileges; provided, however, that as long as any one of these Company Plans and Practices is in effect within the Company, it shall not be withdrawn from the employees covered by this Agreement; and provided, further, that any change in the Industrial Relations Plans and Practices which has the effect of reducing or terminating benefits will not be made effective until one (1) year after notice to the Union by the Plant of such change. . . .
>
> . . . .
>
> Section 3. In addition to receiving benefits pursuant to the Plans set forth in Section 1 above, employees shall also receive benefits as provided by the Company's BeneFlex Benefits Plan, subject to all terms and conditions of said Plan.

The new Section 3 replaced the predecessor contract's Article XIV, which had described the parties' pre-BeneFlex arrangements for medical benefits, and the subsequent MOU referenced above in Stipulation No. 7. Thus, in the successor agreement Article VIII of the predecessor agreement, entitled "Industrial Relations Plans and Practices," was renumbered as Article IX, in the successor agreement, all benefits language was moved to Article IX, and Article XIV was eliminated.

26. The parties' new agreement (the "2000 CBA"), by its terms, ran from June 1, 2000 through May 31, 2003 and then from year to year, absent written notice to terminate or modify at least sixty (60) days prior to its annual renewal date.

27. In bargaining table discussions regarding the negotiation of the new collective bargaining agreement in 2000, Respondent's negotiators responded to a Union question by expressing that DuPont continued to retain the right to alter and modify BeneFlex Plan coverages, premiums and costs pursuant to the reservation of rights language set out in the BeneFlex Plan and the BeneFlex Medical Care Plan plan documents.

28. The Union's bargaining notes of the April 14, 2000 negotiating session contain the following excerpt regarding the proposed change to Article IX and elimination of Article XIV of the Collective Bargaining Agreement:

> **ARTICLE XIV – Hospital and Medical**
>
> Management is proposing to eliminate this since it is old and it is now covered in the BeneFlex Package. The Union stated that by Management doing this, they are taking it out of the bargaining realm. Management said accurate.

The Union made no proposals on benefits and accepted DuPont's proposals.

29. On October 19, 2000, Respondent and the Union met, and the Respondent presented to the Union a summary of the upcoming changes to the BeneFlex Plan for 2001. A true and accurate copy of the summary provided to the Union is attached as "**Exhibit 14**".

Respondent then reviewed the upcoming changes to the BeneFlex Plan with the Union. The 2000 edition of "Plain Talk" was subsequently delivered to all DuPont U.S. Region employees, including the Edge Moor employees represented by the Union. A true and accurate copy of the 2000 "Plain Talk" is attached as "**Exhibit 15**". On October 19, 2000, the Union requested information concerning medical plan costs from the Respondent. At that time, the 2000 CBA was in effect. The Employer subsequently provided the requested information on November 9, 2000. A true and accurate copy of the Employer's reply (also reflecting the Union's underlying information requests) is attached as "**Exhibit 16**".

30. On January 1, 2001, Respondent implemented changes to the Plans listed below. At that time, the 2000 CBA was in effect. The terms of the BenFlex Plan and the BeneFlex Medical Plan permitted DuPont to make changes to the Plans. Respondent did not offer to negotiate over these changes, nor did the Union seek to bargain over these changes:

2001 Changes

- ◊ Increase in premiums for BeneFlex Medical options A, B, L, and P
- ◊ Changes in premiums for life insurance
- ◊ Decrease in premiums for accidental death insurance
- ◊ Decrease in premiums for dependant life insurance
- ◊ Changes in rules regarding spousal coverage
- ◊ Increase in amount of life insurance which employees could purchase (nine options)
- ◊ Increase in amount of life insurance available for dependents (ten options)
- ◊ Changes to life insurance plan, adding portability and accelerated benefits
- ◊ Changes to vision coverage
- ◊ Changes to dependant eligibility definitions
- ◊ Changes to Dependant Care Spending Accounts

◊ Enhancement of medical preventive tests and immunizations (except for HMO options)

◊ Changes to Financial Planning Options

◊ Addition of Direct Deposit to Flexible Spending Account Plans

These changes were summarized in the 2000 "Plain Talk" ("**Exhibit 15**"), as well as in "**Exhibit 17**", which is a true and accurate copy of the 2001 Notice of Material Modifications for the BeneFlex Plan.

The Union did not file any unfair labor practice charges or any grievances contesting DuPont's right to make these changes.

31. On October 10, 2001, Respondent and the Union met and the Respondent presented to the Union a summary of the upcoming changes to the BeneFlex Plan for 2002. A true and accurate copy of the summary provided to the Union is attached as "**Exhibit 18**". Respondent then reviewed the upcoming changes to the BeneFlex Plan with the Union. The 2001 edition of "Plain Talk" was subsequently delivered to all DuPont U.S. Region employees, including the Edge Moor employees represented by the Union. A true and accurate copy of the 2001 "Plain Talk" is attached as "**Exhibit 19**". On October 10, 2001, the Union requested information concerning the BeneFlex Medical Plan costs from the Respondent and was subsequently provided with the information requested. A true and accurate copy of the information request is attached as "**Exhibit 20**".

32. On January 1, 2002, Respondent implemented changes to the Plans listed below. At that time, the 2000 CBA was in effect. The terms of the BeneFlex Plan and the BeneFlex Medical Plan permitted DuPont to make changes to the Plans. Respondent did not offer to negotiate over these changes, nor did the Union seek to bargain over these changes:

2002 Changes

◊ Increase in premiums for BeneFlex Medical Options B, L and P

- ◊ Changes in rules regarding spousal medical coverage
- ◊ Increase in maximum contributions to Health Care Flexible Spending Accounts
- ◊ Elimination of Option A from BeneFlex Medical Plan
- ◊ Increase in office visit co-pays under Options L and P for BeneFlex Medical Plan
- ◊ Increase in Hospital Admission co-pays for Option L for BeneFlex Medical Plan
- ◊ Changes to deductibles for medical coverage
- ◊ Changes to Stop Loss Amounts for all medical care coverage
- ◊ Addition of Stop Loss Protection for prescription drugs
- ◊ Changes in coinsurance and co-pays for prescription drugs
- ◊ Decrease in premiums for Vision Care Plan
- ◊ Changes to coverage for polycarbonate lenses under Vision Care Plan
- ◊ Changes to Financial Planning benefit

These changes were summarized in the 2001 "Plain Talk" ("**Exhibit 19**"), as well as in "**Exhibit 21**", which is a true and accurate copy of the 2002 Notice of Material Modifications for the BeneFlex Plan.

The Union did not file any unfair labor practice charges or any grievances contesting DuPont's right to make these changes.

33. On October 15, 2002, Respondent and the Union met and the Respondent presented to the Union summaries of the overview of changes to the BeneFlex Plan for 2003. A true and accurate copy of the summaries provided to the Union is attached as "**Exhibit 22**". Respondent then reviewed the upcoming changes to the BeneFlex Plan with the Union. In lieu of "Plain Talk", the "Health Care 2003 Communication for Employees" was subsequently delivered to all DuPont U.S. Region employees, including the Edge Moor employees represented by the Union. A true and accurate copy of the "Health Care 2003 Communications for Employees" is attached as "**Exhibit 23**".

34. On January 1, 2003, Respondent implemented changes to the Plans listed below. At that time, the 2000 CBA was in effect. The terms of the BeneFlex Plan and the BeneFlex Medical Plan permitted DuPont to make changes to the Plans. Respondent did not offer to negotiate over these changes, nor did the Union seek to bargain over these changes:

2003 Changes

- ◊ Increase in premiums for medical coverage
- ◊ Separating employee and retiree plan costs for purposes of setting premium increases for medical coverage
- ◊ Implementing new cost sharing approach for employees, retirees and survivors
- ◊ Introducing a new Medical Care Option U for BeneFlex Medical Plan
- ◊ Elimination of Option L for BeneFlex Medical Plan
- ◊ Implementation of Medical Decision support

These changes were summarized in the "Health Care 2003 Communications for Employees" ("**Exhibit 23**"), as well as in "**Exhibit 24**", which is a true and accurate copy of the 2003 Notice of Material Modifications for the BeneFlex Plan.

The Union did not file any unfair labor practice charges or any grievances contesting DuPont's right to make these changes.

35. Because neither party opened the contract, the 2000 CBA entered into on June 1, 2000 renewed by its own terms on May 31, 2003 for an additional year.

36. On October 14, 2003, Respondent and the Union met and the Respondent presented to the Union a pamphlet entitled "2004 BeneFlex Highlights," which summarized the changes to the BeneFlex Plan for 2004, and the 2003 edition of "Plain Talk," which also summarized the changes. A true and accurate copy of the pamphlet provided to the Union is attached as "**Exhibit 25**". Respondent then reviewed the upcoming changes to BeneFlex with the Union. The 2003 edition of "Plain Talk" was subsequently delivered to all U.S. Region

Respondent employees, including the Edge Moor employees represented by the Union. A true and accurate copy of the 2003 "Plain Talk" is attached as "**Exhibit 26**".

37. On January 1, 2004, Respondent implemented changes to the Plans listed below. At that time, the 2000 CBA was in effect. The terms of the BeneFlex Plan and the BeneFlex Medical Plan permitted DuPont to make changes to the Plans. Respondent did not offer to negotiate over these changes, nor did the Union seek to bargain over these changes:

2004 Changes

- ◊ Increase in premiums for medical care coverage
- ◊ Addition of BeneFlex Legal Services Plan
- ◊ Implementation of new dental plan feature (MetLife preferred Dentist provider)
- ◊ Changes in definitions for dependant coverage
- ◊ Elimination of one option to BeneFlex Financial Planning Plan
- ◊ Changes to list of Qualifying Life Events
- ◊ Changes to Health Care Spending Account Plan (adding reimbursement for non-prescription drugs and vitamins)
- ◊ Changes to benefits provided for infertility treatment under BeneFlex Medical Plan
- ◊ Changes to Mental Health/Chemical Dependency Benefits

These changes were summarized in the 2003 "Plain Talk" ("**Exhibit 26**"), as well as in "**Exhibit 27**", which is a true and accurate copy of the 2004 Notice of Material Modifications for the BeneFlex Plan.

The Union did not file any unfair labor practice charges or any grievances contesting DuPont's right to make these changes.

38. By letter dated March 31, 2004, Respondent timely informed the Union that it was exercising its right to terminate the 2000 CBA and undertake negotiations for a successor agreement. Thus, the 2000 CBA expired by its own terms May 31, 2004. Negotiations for its

successor commenced on April 29, 2004 and the parties have continued to bargain since that date. A true and accurate copy of Respondent's March 31, 2004 letter is attached as "**Exhibit 28**".

39. At the parties' first bargaining session on April 29, 2004, Respondent stated that it believed it had always had the right to make changes to the BeneFlex Plan and the BeneFlex Medical Care Plan post contract expiration and that it intended to propose that a provision confirming this be added to the successor collective bargaining agreement, especially as a result of the litigation pending case in Cases 3-CA-22854, 23066, 22957 and 23275 involving the DuPont Yerkes facility in New York and the pending case in Case 9-CA-40777 involving the "Louisville Works" DuPont facility in Kentucky.

40. From its initial implementation of the BenFlex Plan and the BeneFlex Medical Care Plan for employees included in the Union's bargaining unit at Respondent's Edge Moor, Delaware facility on January 1, 1994, through May 31, 2004, changes to the BeneFlex Plan or the BeneFlex Medical Care Plan occurred during the term of a Collective Bargaining Agreement between the Respondent and the Union.

41. At a bargaining session on May 26, 2004, Respondent provided a written summary of its non-economic proposals, which included a reference to proposing additional language to Article IX which would expressly allow DuPont to apply corporate-wide annual changes in the Plans to Edge Moor participants both during the term of the collective bargaining agreement and during any open contract period until a new agreement is reached by the parties. The Union proposed extending the Collective Bargaining Agreement for a thirty day rolling period.

42. At a bargaining session on May 27, 2004, the Respondent stated that it did not want to extend the Agreement. Consequently, the Collective Bargaining Agreement expired on May 31, 2004.

43. At a bargaining session on June 14, 2004, the Respondent proposed in writing specific language to add to Article IX, Section 3;

> In addition, the Union and Management agree that the provisions of this Section 3 shall survive the expiration of this Agreement and shall remain in full force and effect unless and until the Parties mutually agree to change or terminate this Section 3.

The Union responded to the Employer's proposal by letter dated June 14, 2004. The Union informed the Respondent that it recognized that it was lawful for Respondent to make its proposal to add this language to Article IX, Section 3, but that the Union considered the proposal to be a permissive subject of bargaining. A true and accurate copy of the Union's letter to Respondent is attached as "**Exhibit 29**".

44. At a bargaining session on June 15, 2004, Respondent replied to the Union's letter of June 14, stating that the BeneFlex Plans were a mandatory subject of bargaining: the Union agreed. However, the Union stated its position that the management's rights proposal for Article IX, Section 3 was a permissive subject of bargaining that could not be implemented at impasse and that a lock out to obtain it would be illegal.

45. At a bargaining session on June 21, 2004, the Union sent two letters to the Respondent. The first letter stated that, in response to a management question about the Union's position on the BeneFlex Plans and Respondent's proposal, the Union was neither accepting nor rejecting "existing language at this time", but was objecting to the proposed modification of Article IX, Section 3. The second letter repeated the Union's position that Respondent's proposed modification of Article IX, Section 3 was a permissive subject of bargaining, and

further stated that it was not interested in the proposal and considered it "off the bargaining table". True and accurate copies of the letters are attached as "**Exhibits 30 and 31**".

46. At a bargaining session on June 22, 2004, the parties again discussed Respondent's proposal to add language to Article IX, Section 3. The Union reiterated that it had no interest in considering the Respondent's proposal because it involved a permissive subject of bargaining and that the Union considered the matter "off the table". The Respondent repeated its position that the rights contained in its proposal were already in the Collective Bargaining Agreement and that Respondent already had the right to make the changes after the Collective Bargaining Agreement expired. The Union disagreed that Respondent's right to make the changes survived the expired Agreement.

47. At a bargaining session on July 13, 2004, the parties again revisited DuPont's proposal for Article IX, Section 3. The Respondent repeated the reasons for its proposed language, stated that this was a "major" proposal and expressed that the Union would either have to discuss it or present a counter-proposal. The Union asked if management was "pulling BeneFlex off the table". Respondent's negotiators replied that if the Union would not bargain the proposal on the table, the Union would have to propose something else.

48. At a session on July 15, 2004, there were once again extended discussions concerning the Respondent's Article IX, Section 3 proposal. The Respondent made clear that it was not withdrawing the BeneFlex Plans from consideration, but rather was still proposing an offer of the BeneFlex Plans coupled with the proposed new language. The Respondent expressed a willingness to discuss this issue, but indicated an unwillingness to provide the BeneFlex Plans without new language. Absent that, Respondent's negotiators stated that the Union would have to propose a benefit option outside of the BeneFlex Plans. Union negotiators responded with a counter-proposal, stating that they would accept the BeneFlex Plans, but

without the proposed new language for Article IX, Section 3. The Respondent rejected that counter-proposal and suggested the Union propose alternative benefit coverage.

49. By letter dated July 19, 2004, the Respondent reiterated that it was not withdrawing the BenFlex Plan. The Union responded at a bargaining session on July 22, 2004 with a letter, criticizing Respondent's bargaining tactics. True and accurate copies of these letters are attached as "**Exhibits 32 and 33**", respectively.

50. In mid-July, 2004, the Union commenced efforts to formulate a counter-proposal to the BeneFlex Plans.

51. At a bargaining session on September 29, 2004, the Union had representatives from Blue Cross/Blue Shield of Delaware ("BC/BS") make a presentation to Respondent concerning an option that might form the basis of a counter-proposal to the Respondent's BeneFlex Plan. However, the Union made no formal proposal at that time.

52. On September 29, 2004, the Union requested that the Respondent provide it with information concerning proposed changes to the BeneFlex Plans for 2005. A true and accurate copy of the Union's request is attached as "**Exhibit 34**".

53. On October 11, 2004, Respondent and the Union met, and the Respondent presented to the Union the "2005 BeneFlex Guide" and the "2005 BeneFlex Highlights", both of which summarized the upcoming changes to the BeneFlex Plans for 2005. A true and accurate copy of the "2005 BeneFlex Guide" is attached as "**Exhibit 35**". A true and accurate copy of the "2005 BeneFlex Highlights" is attached as "**Exhibit 36**". Respondent then reviewed the upcoming changes to the BeneFlex Plan with the Union. In lieu of "Plain Talk", the "2005 BeneFlex Highlights" was subsequently delivered to all U.S. Region Respondent employees, including the Edge Moor employees represented by the Union.

54. At a bargaining session on October 6 and a bargaining session on October 13, 2004, the Union and the Respondent engaged in further discussion of BeneFlex, medical and other benefits, including questions arising from the Union's Blue Cross/Blue Shield presentation, but the parties did not change their respective positions concerning whether Respondent had the right to make changes in benefits without bargaining during an open contract period. In response to management questions about when a formal benefits proposal could be expected, the Union replied that it was working with BC/BS to formulate a proposal and the proposal would be compared by BC/BS to Respondent's 2005 proposed changes to BeneFlex..

55. On October 14, 2004, the Union wrote to Respondent regarding the BeneFlex Plan. In its letter the Union wrote:

> …the Union objects to any implementation of changes to the BeneFlex plan: The Employer must bargain in good faith to impasse or agreement on any proposed changes. Accordingly the Union requests bargaining on proposed changes to the BeneFlex plan.

A true and accurate copy of this correspondence is attached as "**Exhibit 37**".

56. At a bargaining session on November 8, 2004, the Union presented the Respondent with a counter-proposal to the BeneFlex Plans that included medical, vision, dental, life and accidental death and dismemberment insurance through BC/BS. The parties discussed the Union's proposal and compared it to the BeneFlex Plan benefits. A true and accurate copy of the proposal is attached as "**Exhibit 38**". The Union also proposed that vacation buyback and financial planning benefits would continue to be provided through the BeneFlex Plan.

57. At a bargaining session on November 16, 2004, the Union withdrew its benefits counter-proposal of November 8. Instead, the Union presented Respondent with two proposals in the alternative. As the first proposal, the Union presented the Respondent its "Union One Time Offer – 11/16/04", by which the Union offered to accept the BeneFlex Plans for 2005 with all changes as announced and while the parties continued to bargain for a Collective Bargaining

Agreement, provided that Respondent withdrew its proposal for new language for Article IX, Section 3 and provided that Respondent accepted the offer that day. As a second proposal, the Union presented Respondent with its "Union Proposal Modification – 11/16/04", that included providing benefits through BC/BS, except for vacation buyback and financial planning benefits, and proposed that the financial contributions of bargaining unit members for coverage under BC/BS would not be more than the amount of those of non-unit employees participating in the BeneFlex Plans. The Respondent did not agree to accept either Union proposal. A true and accurate copy of the "Union One Time Offer – 11/16/04" is attached as "**Exhibit 39**". A true and accurate copy of the "Union Proposal Modification – 11/16/04 is attached as "**Exhibit 40**".

58. At a bargaining session on December 16, 2004, the Respondent informed the Union that it was going to implement the previously announced changes to the BeneFlex Plans on January 1, 2005, stating that Respondent felt that it had the right to do so and another plan could not be implemented effective January 1, 2005. The Union responded that it did not agree to the implementation, that benefits were a mandatory subject of bargaining, and that it believed that the Respondent's planned action was not legal.

59. On January 1, 2005, Respondent implemented changes to the BeneFlex Plans listed below.

2005 Changes

- ◊ Changes to prescription drug cost sharing, with new incentives for the mail order drug benefit
- ◊ Replacement of "Employee + One" coverage level with "Employee + Child(ren)" and "Employee + Spouse"
- ◊ Increase in premiums for certain medical options and coverage levels
- ◊ Increase in premiums for the High dental option
- ◊ Increase in premiums for financial planning benefit

◊ Redesign of the catastrophic medical plan option, with the addition of a health savings account component

◊ Changes in coverage levels for medical, dental and vision options

These changes were summarized in the "2005 BeneFlex Highlights" ("**Exhibit 36**"), as well as in "**Exhibit 41**", which is a true and accurate copy of the 2005 Notice of Material Modifications for the BeneFlex Plan.

60. On or about January 3, 2005, the Union filed an Unfair Labor Practice Charge, Case No. 4-CA-33620, alleging that Respondent violated Section 8(a)(5) by implementing for the Edge Moor bargaining unit employees the above-described 2005 changes to the BeneFlex Plan.

61. At a bargaining session on January 26, 2005, the Union presented Respondent with a package of proposals. Benefits were not addressed in the package, but in response to a management question as to what the Union was proposing, the Union said that it was seeking language that was "the same as the old contract", i.e., the Plans without the changes to Article IX, Section 3 proposed by Respondent.

62. By letter dated March 10, 2005, Respondent presented a counterproposal to the Union's contract package. A true and accurate copy of Respondent's counterproposal is attached as "**Exhibit 42.**"

63. At a bargaining session on March 11, 2005, the parties reviewed Respondent's counterproposal. The Union announced that it would submit this most recent contract proposal to its membership for a vote, but without Item #4 (Respondent's proposed new language for Article IX, Section 3) and Item #9 (Respondent's proposal "regarding pending unfair labor practice charges").

64. By letter dated March 21, 2005, Respondent provided a revised set of counterproposals, removing from its March 10, 2005 proposal, as the Union had requested, Items

#4 and #9 to which the Union had objected. The letter also emphasized Respondent's view that the parties had not reached impasse in the negotiations and that it was willing to continue to meet and bargain in good faith. A true and accurate copy of Respondent's March 21 letter is attached as "**Exhibit 43.**"

65. On March 31 and April 1, 2005, Union membership rejected Respondent's contract proposal package. On April 5, 2005, the Union wrote to Respondent to inform it "that an overwhelming majority of the membership has rejected the package of tentative agreements including the Company's March 21, 2005 set of proposals." A true and accurate copy of the Union's April 5 letter is attached as "**Exhibit 44.**"

66. The parties have subsequently held additional bargaining sessions.

Respectfully submitted this 12 day of September, 2005.

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AGREEMENT

between

E. I. du Pont de Nemours and Company

and

Du Pont Edge Moor Union

at

Edge Moor, Delaware

September 1, 1987

AGREEMENT

Effective the 1st day of September, 1987, by and between E. I. DU PONT DE NEMOURS AND COMPANY, INC., on behalf of its Edge Moor Plant, Chemicals and Pigments Department, Edge Moor, Delaware, hereinafter referred to as the PLANT, and THE DU PONT EDGE MOOR UNION, Edge Moor, Delaware, hereinafter referred to as the UNION, acting for and on behalf of itself and of all employees of the said Edge Moor Plant with the exception of the administrative secretary to the Plant Manager, Employee Relations Senior Stenographers, salary roll employees exempt under the Fair Labor Standards Act, patrolmen, nurses, leaders, and supervisory employees with the authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action,

WITNESSETH:

ARTICLE I

Purpose of Agreement

Whereas, it is the intent and purpose of the UNION and the PLANT to promote and improve industrial and economic relationships between the employees and the PLANT, and to set forth the basic agreement covering conditions and terms of employment, the parties hereto agree with each other as follows:

ARTICLE II

Definitions

Section 1. The term "plant", as used herein, shall mean the Edge Moor Plant and the Management of the Edge Moor Plant of E. I. du Pont de Nemours and Company, Chemicals and Pigments Department, located at Edge Moor, Delaware.

Section 2. Unless specifically qualified, the term "employee" or "employees", as used herein, shall mean those employees of the PLANT included within the bargaining unit set forth in the preamble to this Agreement.

Section 3. The term "base rate" as used herein with respect to an hourly roll employee shall mean the established hourly rate for the employee on his regular job excluding shift differential and all other payments.

Section 4. An employee's "base rate" as used herein with respect to a Monthly Salary

Roll employee shall be calculated in accordance with the following formula:

$$\frac{\text{His Established Monthly Salary x 12 Months}}{\text{52 Weeks x 40 Hours Per Week}} = \text{Base Rate Per Hour}$$

Section 5. The term "regular rate" as used herein shall mean the base rate plus shift differential, where applicable, but excluding all other payments.

Section 6. The term "regularly scheduled working hours", as used herein, shall mean the hours which the employee has been assigned to work regularly.

Section 7. The term "holiday" as used herein shall mean any one of the holidays listed in Article XI, Section 1 of this Agreement, or the day observed in lieu thereof.

Section 8. When the term "employee(s)" or a personal noun or pronoun appears in the agreement, it shall be understood to refer to either the masculine or feminine gender or both as applicable in the context in which it appears.

ARTICLE III

Recognition and Scope

Section 1. The UNION has been and is recognized by the PLANT as the exclusive bargaining agency for the employees of said Edge

Moor Plant for the purpose of collective bargaining with respect to rates of pay, wages, hours of work, and other conditions of employment. Nothing contained in this Agreement, however, shall limit the rights of individuals as set forth in Section 9 (a) of the Labor-Management Relations Act.

Section 2. There shall be no discrimination, coercion, interference, or restraint by the PLANT or by any of its agents against any employee because of membership or non-membership in the UNION; and the UNION agrees that there shall be no meetings or solicitation or promotional UNION activity on PLANT time. PLANT time shall not include break periods, meal times, and other specified periods during the workday when employees are properly not engaged in performing their work tasks.

Section 3. This Agreement constitutes the entire Agreement between the parties hereto as of the execution date hereof. However, any supplements which may hereafter be mutually agreed upon by the PLANT and the UNION, when executed in the same manner as this Agreement, shall become and be a part of this Agreement.

ARTICLE IV

Deduction of Unions Dues

Section 1. The PLANT will deduct the regular dues prescribed by the UNION from the

wages or salary of an employee who authorizes the PLANT to make such deductions on a form identical in wording to that appearing in Section 2 of this Article or who has authorized dues deductions in accordance with authorization forms contained in prior agreements between the parties. Such dues authorizations shall be cancelled and deductions stopped in accordance with the provisions of the dues authorization forms or at the option of the PLANT at the termination of this Agreement.

All sums deducted in this manner and a list of employees from whose earnings such deductions have been made shall be turned over by the PLANT to the Treasurer of the UNION.

Section 2.

E. I. DU PONT DE NEMOURS
AND COMPANY
EDGE MOOR, DELAWARE

I hereby revoke any previous UNION dues deduction authorization and hereby authorize you to deduct from my wages or salary after 40 hours' pay has been earned in any calendar month and pay to the Treasurer of the DU PONT EDGE MOOR UNION, the sum of $_____ per month beginning _____. This authorization shall be cancelled and deductions stopped by the PLANT if:

I am no longer employed within the bargaining unit represented by the UNION, or

The UNION is no longer recognized by the PLANT, or

I give written notice of cancellation of such authorization to the PLANT.

NAME _____ PAYROLL NO. _____

DATE _____ WITNESS _____

ARTICLE V

Adjustment of Grievances

Section 1. The UNION shall appoint a Grievance Committee consisting of not more than four (4) employees, including a Chairman. The UNION Representative of the aggrieved employee or employees shall automatically become an additional member of the Grievance Committee. The UNION will keep Management advised of any changes of personnel in the members of this Committee.

Section 2. In the event that a dispute or grievance shall arise between the PLANT and the UNION or employees, an earnest effort shall be made to settle such dispute or grievance, provided it is appealed in writing to the Plant within twenty days of the incident causing the grievance, in the following sequence.

FIRST, when appealing in writing, the UNION shall present the grievance to Employee Relations for

distribution to the appropriate supervision. The grievance will then proceed by meeting between the aggrieved employee(s) and a UNION Representative, and the supervisor designated by Management to settle the dispute or grievance, who may be accompanied by his supervisor. The meeting concerning the grievance will take place and the answer delivered in writing within eight calendar days from the time it is submitted to Management.

SECOND, if not settled in the first step, the grievance may be appealed in writing by the UNION to the appropriate Unit Manager, R&D site head or their designate, who will meet with the aggrieved employee and a UNION Representative to discuss the grievance. The meeting concerning the grievance will take place and answer delivered in writing within ten calendar days from the time it is appealed to this step.

THIRD, if not settled at the second step, the grievance may be appealed in

writing by the UNION to the Plant Manager. The Plant Manager or his designate along with his committee will meet with the Union Grievance Committee and the aggrieved employee to discuss the grievance. The meeting concerning the grievance will take place and the answer delivered in writing within fourteen calendar days from the time it is appealed to this step.

THIRD, if not settled at the second step, the grievance may be appealed in writing by the UNION to the Plant Manager. The Plant Manager or his designate along with his committee will meet with the Union Grievance Committee and the aggrieved employee to discuss the grievance. The meeting concerning the grievance will take place and the answer delivered in writing within fourteen calendar days from the time it is appealed to this step.

Section 3. The time limits set forth above may be waived by agreement between the PLANT and the UNION if the grievance is of such nature that it cannot reasonably be

answered or appealed within the time limit specified. A notation of this waiver will be recorded by both parties on the written grievance.

Section 4. Aggrieved employees and representatives of the UNION shall not leave their place of work until released by their supervisor or area management.

Section 5. Should any grievance or multiple grievances involving the same issue arise which include more than one aggrieved employee, a limit of two aggrieved employees will be allowed time off during working hours without loss of pay as required by these proceedings.

Section 6. Any grievance not appealed to the next step within seven calendar days after Management's answer will be considered settled. Any grievance not answered by Management within the time limits at the first or second step may be appealed by the Union to the next step.

Section 7. Grievance answers shall be distributed in accordance with the current procedure.

ARTICLE VI

Arbitration

Section 1. Any question as to the interpretation, or any alleged violation, of any provision of this Agreement which is not otherwise set-

tled to the mutual satisfaction of the parties hereto, at the request of either party, shall be submitted to arbitration in the manner provided in Section 2 of this Article.

Section 2. The parties shall meet within five (5) calendar days after notice of desire to arbitrate is received for the purpose of agreeing upon the issue or issues to be arbitrated.

If within seven (7) calendar days following the initial meeting, the parties cannot agree upon, and sign, a submission agreement, the proceedings may be initiated by the party requesting arbitration giving a statement in writing to the other party specifying only the question it wishes to submit to arbitration and the provision or provisions of the Agreement it believes to be involved therein. If the other party does not believe that the party requesting arbitration has correctly specified the question, or the provision or provisions involved, it shall submit to the party requesting arbitration within seven (7) calendar days following the receipt of the said statement from the party requesting arbitration, its own statement specifying only the question and the provision or provisions it believes to be involved.

Within five (5) days after the execution of the submission agreement, or within five (5) days after the receipt of the statements from both parties, the parties shall each nominate its arbitrator and furnish him with copies of the

submission agreement or copies of the statements from both parties. The two named arbitrators shall select a third, impartial arbitrator who shall act as Chairman of the Board of Arbitration and be furnished with a copy of the submission agreement or copies of the statements of both parties. If no agreement for a Chairman is reached within five (5) calendar days, then such third arbitrator shall be selected from a panel or panels submitted by the American Arbitration Association.

The Chairman shall then confer with the two (2) other named arbitrators to determine a time and place for the hearing. The decision of a majority of the three (3) arbitrators shall be final and binding upon both parties hereto.

The jurisdiction and authority of the Board of Arbitration to make an award shall be confined to the interpretation or application of the provisions of this agreement. The Board of Arbitration shall not have jurisdiction or authority to make an award which has the effect of amending, altering, enlarging or ignoring any section of the Agreement; nor shall it have jurisdiction or authority to determine that the parties by prior practice or implication have amended or added to this Agreement.

The fees and expenses of the third arbitrator shall be borne equally between the UNION and the PLANT.

ARTICLE VII

Discharge

Section 1. The PLANT agrees that no employee will be discharged except for just cause.

Section 2. When an employee has been discharged or suspended from work, and believes that he has been unjustly discharged or suspended, such employee shall be allowed seven (7) days within which to register a complaint, and such complaint shall be considered and dealt with in accordance with the provisions of Article V, "Adjustment of Grievances" beginning at the second step.

Such cases of discharge or suspension will be discussed with a Representative of the UNION before final action is taken. The employee involved may attend such discussions if he wishes.

Section 3. If a complaint on discharge is not settled under the provisions of Section 2 above, it may then be considered and dealt with in accordance with the provisions of Article VI, "Arbitration" within 60 days of termination.

Section 4. If it is found that an employee has been unjustly discharged or suspended, the PLANT shall reinstate and compensate such employee for time lost at his regular rate immediately prior to such dispute; provided, however, such period of payment shall not exceed

nine (9) calendar months; and he shall be restored with all seniority rights and service credit for all time lost.

ARTICLE VIII

Industrial Relations Plans and Practices

Section 1. All existing privileges heretofore enjoyed by the employees in accordance with the following Industrial Relations Plans and Practices of the COMPANY shall continue, subject to the provisions of such Plans and to such rules, regulations and interpretations as existed prior to the signing of this Agreement, and to such modifications thereof as may be hereafter adopted generally by the COMPANY to govern such privileges; provided, however, that as long as any one of these COMPANY Plans and Practices is in effect within the COMPANY, it shall not be withdrawn from the employees covered by this Agreement; and provided, further, that any change in the Industrial Relations Plans and Practices which has the effect of reducing or terminating benefits will not be made effective until twelve (12) months after notice to the UNION by the PLANT of such change:

Non-Contributory Group Life Insurance Plan
Contributory Group Life Insurance Plan
Group Accident and Health Insurance Plan

Salary Allotment Insurance Plan
Short Term Disability Plan
Pension and Retirement Plan
Special Benefits Plan
Vacation Plan
Service Emblem Plan
Continuity of Service Rules
Treatment of Employees Called or Enlisting for Military Service
Payment to Employees on Jury Duty
Savings & Investment Plan
Dental Assistance Plan*
Total & Permanent Disability Income Plan

Section 2. An employee's length of service for consideration of benefits under the COMPANY'S Industrial Relations Plans and Practices shall be his continuous service with the COMPANY, as calculated in accordance with the COMPANY'S Continuity of Service Rules.

ARTICLE IX

Seniority

Section 1. Seniority of an employee on the Edge Moor Plant on April 26, 1951, is his

*The Dental Assistance Plan, effective September 1, 1976, has a schedule of allowances applicable to employees covered by this Agreement which are subject to revision solely by the COMPANY and without reference to such a schedule in effect for any other employees, and any such revision of schedules shall not be construed as a reduction, termination, or withdrawal of benefits.

seniority as shown on the Plant seniority roster on that date and shall continue to accumulate from that time as calculated and adjusted in accordance with provisions (a), (b), and (c) of this Section.

Seniority of an employee placed on the Edge Moor Plant roll after April 26, 1951, shall be calculated and adjusted beginning with the first day he worked in the last period of his unbroken employment on the Edge Moor Plant in accordance with provisions (a), (b), and (c) of this Section.

(a) When a former employee is re-employed following his termination because of lack of work, he shall immediately regain the seniority he had accrued prior to his termination. It is understood that no seniority credit will be given for the period of time between termination and re-employment, and it is further understood that the seniority a former employee had at the time of termination because of lack of work shall be used only for the purpose of giving consideration to re-employment during a period limited to two (2) years following such termination.

(b) An employee whose break in length of service is cured by action of the PLANT, shall regain or be credited with the amount of seniority equivalent to the length of service credit of the cure, provided that such cured service, if acquired after April 26, 1951, must

have been for time worked on the Edge Moor Plant in order to be credited as seniority.

(c) The seniority of an employee shall be adjusted by deducting the time lost due to leave of absence without pay except that time lost on leave of absence granted because of illness or injury or military service will not be deducted.

Section 2. The seniority of an employee shall be automatically broken and terminated in case of:

1. Discharge;
2. Discontinuance;
3. Voluntary quit;
4. Termination because of lack of work;
5. Absence in excess of sixteen (16) consecutive days not covered by leave of absence; or
6. Failure to return to work following expiration of leave of absence.

Section 3. In matters affecting terminations because of lack of work, transfers, demotions and promotions of employees and re-employment of former employees, including temporary assignment of expected duration longer than three (3) months or relief, the following factors shall apply:

(1) Seniority;
(2) Ability, skill, efficiency, knowledge and training; and
(3) Physical fitness (only in cases of re-employment, transfers, demotions and promotions).

In cases where the candidates have approximately the same qualifications as determined by factors (2) and (3), seniority shall govern.

Section 4. (a) Permanent job openings other than the Yard Labor and Service Custodian for wage roll employees, or Utility Clerk with respect to nonexempt salaried employees, will be posted for a period of ninety-six (96) hours excluding Saturdays, Sundays, and holidays.

(b) The applicant who accepts and is awarded a posted job based on qualifications and seniority must go to that posted job unless:

1. 180 calendar days have elapsed without the applicant being moved to the job, at which time he will be afforded a ninety-six (96) hour opportunity to withdraw his application. The applicant will be given subsequent opportunities to withdraw his application at 30 day intervals if movement has not taken place.
2. He becomes the successful applicant on another posted job.

(c) Temporary job openings which are expected to exist for longer than three (3) months will be posted according to the same procedure as permanent jobs.

(d) Temporary jobs shorter than three (3) months' duration, and temporary jobs pending the transfer of the successful applicant for a posted job, will be filled by an employee deemed qualified by Management.

Section 5. A successful applicant who does not perform satisfactorily in the judgment of the PLANT on his new job during a trial period of ninety (90) calendar days or less, will go back to his former job and all other moves that were made as a result of the opening will revert to their former status.

Section 6. An employee who is or has been transferred from an occupation covered by this Agreement to an occupation not covered by this Agreement, and who is later returned to an occupation covered by this Agreement, shall be credited with seniority for all time spent both inside and outside the bargaining unit.

Section 7. Should any difference arise with respect to the promotion, demotion, termination because of lack of work, or transfer of an employee, or re-employment of a former employee, such difference may be treated as a grievance under Article V of this Agreement. Promotions to supervisory positions or to jobs outside the scope of this bargaining unit shall be solely a function of the PLANT, and, therefore, shall not be made the basis of a dispute between the UNION and the PLANT.

Section 8. A new employee shall not benefit from seniority provisions during the first ninety (90) calendar days of service but after the first ninety (90) calendar days of service his seniority shall be established as of hiring date.

During this probationary period of ninety (90) days a new employee may be terminated, and such action shall not be subject to the terms of the Agreement.

ARTICLE X

Hours of Work and Overtime Premiums

Section 1. Provisions Applicable to all Employees Covered by this Agreement:

(a) The regular workday shall begin at 7:00 A.M. and shall end the following day at 7:00 A.M., except in cases where the PLANT may designate otherwise with respect to any individual employee or group of employees.

(b) The regular workweek shall begin Sunday at 7:00 A.M. and shall end the following Sunday at the same hour, except in cases where the PLANT may designate otherwise with respect to any individual employee or group of employees.

(c) Shifts shall consist of eight (8) hours each, the first shift starting at 7:00 A.M. and ending at 3:00 P.M., the second shift starting at 3:00 P.M. and ending at 11:00 P.M., and the third shift starting at 11:00 P.M. and ending at 7:00 A.M. The working hours of employees not working on shifts (employees known as day workers) shall be from 7:30 A.M. to 4:00 P.M. with one-half hour unpaid lunch period. Schedules other than these may be established by the Plant and will be discussed with the UNION.

(d) For the purpose of determining the sixth or seventh day worked in a workweek, an employee shall be considered to have performed a day's work when:

(1) The employee works his regularly scheduled working hours in a workday;

(2) On any workday the employee works any time or reports for assigned work and is sent home because of lack of work or other reason beyond his control, provided that if the employee in either of these cases absents himself for any part of his full schedule of work without justifiable cause as determined by the Plant, that day shall not be counted as a day worked;

(3) On any holiday which falls on a day in the employee's regular schedule of work in that work week and occurs prior to the sixth day worked, the employee is required to take the day off solely because it is a holiday; provided, however, that a holiday occurring on an employee's day of rest shall not be counted in determining the sixth or seventh day worked in a work week. If the employee scheduled to work on such a holiday is absent, he shall not receive credit for it as a day worked;

(4) An employee works beyond his normal shift into his regularly scheduled day of

rest to the extent of four (4) or more hours. In no case shall an employee receive credit for more than one (1) day worked in any workday.

Section 2. Overtime Provisions for Hourly ıol Employees:

(a) Overtime pay at one and one-half (1½) imes the employees regular rate shall be paid or:

(1) All hours worked in excess of eight (8) hours in any workday, or in excess of forty (40) hours in any work week, whichever provision produces the greater amount of pay.

(2) All hours worked on the sixth day worked in a work week.

(3) All hours worked on the Sunday regular workday.

(4) All consecutive hours worked by a vacation relief employee in excess of eight (8) straight time hours in any consecutive twenty-four (24) hour period.

(5) Work outside of regularly scheduled working hours.

(b) Overtime pay at two (2) times the mployee's regular rate shall be paid for all ours worked on the seventh day worked in the ork week.

(c) When more than one rate is applicable to ıe same hours of work, the rates shall not be yramided but only the highest single rate

applicable shall be paid. When one and one-half (1½), two (2), or two and one-half (2½) time rates are paid for hours worked, such hours will be considered overtime hours.

Section 3. Overtime Provisions for Non-Exempt Salaried Employees:

(a) One and one-half (1½) times the employee's regular rate shall be paid for:

(1) All hours worked in excess of eight (8) hours in any work day or in excess of forty (40) hours in any work week;

(2) All hours worked on the sixth day worked in a work week containing a holiday subject to provisions of Section 1(d)(3) of this Article;

(3) Work outside of regularly scheduled working hours;

(4) All hours worked on the Sunday regular workday.

(b) Overtime pay at two (2) times the employee's regular rate shall be paid for all hours worked on the seventh day worked in the work week.

(c) When more than one rate is applicable to the same hours of work, the rates shall not be pyramided but only the highest single rate applicable shall be paid, except as provided in Article XI, Section 4(b). When one and one-half (1½), two (2) or two and one-half (2½) time rates are paid for hours worked, such hours will be considered overtime hours.

ARTICLE XI

Holiday Pay

Section 1. An hourly wage roll employee who works on any of the holidays designated below shall be paid overtime pay at one and one-half (1½) times his regular rate for all hours worked in addition to a holiday allowance equivalent to pay for regularly scheduled working hours not to exceed eight (8) hours at his regular rate; or he shall be paid overtime pay at two and one-half (2½) times his regular rate for such holiday hours worked, whichever yields the greater pay:

New Year's Day
Good Friday
Memorial Day
July Fourth
Labor Day
Thanksgiving Day
Day After Thanksgiving Day
December 24th
Christmas Day
Two (2) Personal Holidays

When any of the foregoing holidays, except December 24th, falls on Sunday, the following Monday shall be observed as the holiday. When December 24th falls on Sunday, the following Tuesday shall be observed as the holiday.

When any of the foregoing holidays fall on Saturday, the preceding Friday shall be

observed as the holiday by all employees regularly scheduled to work on a Monday through Friday basis. All other employees will observe such holiday on Saturday. When Christmas Day falls on Saturday and is observed on Friday, the December 24th holiday will be observed on the preceding Thursday.

Holiday hours shall coincide with the regular workday, as defined in Section 1 of Article X.

Section 2. Pay for hours equivalent to regularly scheduled hours not to exceed eight (8), at the employee's regular rate, shall be paid to an hourly wage roll employee for a holiday on which he does not work, provided such employee:

(a) Does not work the holiday for the reason that

(1) He is required by Management to take the day off from work solely because it is a holiday, or

(2) The holiday is observed on one (1) of his scheduled days of rest (an employee on vacation, leave of absence without full pay, or absent from work for one (1) week or more due to a shutdown of equipment or facilities or conditions beyond Plant's control, shall not be considered as having "scheduled days of rest" during such periods of absence), and

(b) Works on his last scheduled working day prior to the holiday and on his next scheduled working day following the holiday unless excused by Management from work on these days.

Section 3. Pay for hours equivalent to regularly scheduled working hours not to exceed eight (8), at the employee's regular rate, shall be paid a salary employee for a holiday on which he does not work, provided such employee:

(a) Does not work on the holiday for the reason that the holiday is observed on one (1) of his scheduled days of rest; (an employee on vacation, leave of absence without full pay, or absent from work for one (1) week or more due to a shutdown of equipment or facilities or conditions beyond the Plant's control, shall not be considered as having "scheduled days of rest" during such periods of absence);

(b) Works on his last scheduled working day prior to the holiday and on his next scheduled working day following the holiday unless excused by the PLANT from work on these days.

Section 4. (a) A nonexempt salary employee who works on any holiday occurring on his scheduled day of rest shall be paid overtime pay at one and one-half (1½) times his regular rate for all hours worked in addition to

a holiday allowance equivalent to pay for regularly scheduled working hours not to exceed eight (8) hours at his regular rate, or he shall be paid overtime pay at two and one-half (2½) times his regular rate for such holiday hours worked, whichever yields the greater pay.

(b) A nonexempt salary employee who works on any holiday occurring on his normally scheduled day of work shall be paid his regular salary for that day, and in addition at the overtime rate of one and one-half (1½) times his regular rate of pay for the hours worked up to eight (8) hours but not the holiday allowance. Such holiday hours worked which are over eight (8) shall be paid for at the overtime rate of two and one-half (2½) times the employee's regular rate.

(c) Observance of holidays by a nonexempt salary employee regularly scheduled to work on a Monday through Friday basis will be in accordance with Section 1 of this Article.

Section 5. Holiday hours paid for but not worked under Section 2, Item (a)(1) above, and which occur prior to the sixth day worked, shall be used in computing overtime payable for hours worked in excess of forty (40) in a work week. The hours for holidays not worked under Section 2, Item (a)(2) above, shall not be used in computing overtime payable for hours worked in excess of forty (40) in a work week.

ARTICLE XII

Wages

Section 1. General rates of pay will be subject to discussion between the UNION and the Plant at any mutually convenient time, and no general changes will be made in general rates of pay without prior consultation between the Plant and the UNION.

Section 2. Either party to this Agreement may reopen negotiations in connection with general rates of pay on thirty (30) days' written notice to the other party.

Section 3 A. Employees regularly scheduled to work on shifts shall be paid, in addition to their base rate, the shift differential applicable to the hours worked, as follows:

(a) For all hours worked on the afternoon shift (3:00 P.M. to 11:00 P.M.), a shift differential of thirty-five cents ($.35) per hour shall be paid.

(b) For all hours worked on the midnight shift (11:00 P.M. to 7:00 A.M.), a shift differential of fifty-five cents ($.55) per hour shall be paid.

(c) For all hours worked on the day shift (7:00 A.M. to 3:00 P.M.), no shift differential shall be paid.

(d) When an employee's regularly scheduled shift includes work in more than one of the periods specified in (a), (b) or (c) of this Section, his shift differential shall be determined

by either method (1) or (2) below, whichever yields the greater amount of pay:

(1) he shall receive the shift differential applicable to the hours worked or

(2) he shall receive for all hours worked, the higher shift differential, if any, applicable to the period in which he works four (4) or more hours.

B. When a day worker works hours outside of his regular schedule he shall be paid the shift differential applicable to such hours worked.

Section 4. An employee called in outside his regularly scheduled shift shall receive a "call-in" allowance of either: (a) three (3) hours' pay at his base rate plus applicable shift differential, if any, in addition to any other payment to which he may be entitled; or (b) a minimum of four (4) hours' pay at his base rate, whichever yields the greater amount of pay.

Whenever change of scheduled overtime is paid, a call-in allowance is to be paid on the first day of the new schedule.

An employee who is requested after the end of his shift but before he leaves the plant to return to work and who performs such work shall receive a "call-back" allowance of one (1) hour's pay at his base rate plus applicable shift differential, if any, in addition to any other payment to which he may be entitled.

An employee requested to work beyond the end of his regularly scheduled working hours,

shall be given a minimum of thirty minutes' notice of such holdover prior to the end of the scheduled working hours. If the employee is not advised of the need to work overtime working hours, an allowance equal to one hour's pay at regular rate shall be paid. Late relief and similar situations beyond Management's control are excluded and will not warrant payment of this allowance.

An employee held over at least 15 minutes beyond his regular shift shall be provided the opportunity to continue to work at least two (2) hours. This does not apply if the holdover is caused by late relief.

Section 5. After a two (2) weeks' training period, an hourly roll employee who has been selected for a job will receive the rate of that job, provided in the opinion of the Plant he is qualified to perform the job except for permanent transfers to Swing, Relief, or Reserve Operator Jobs. On these jobs, the employee will receive the full rate of the job when he is qualified to cover all the jobs or two month's time on the job, whichever happens first.

Section 6. An employee who reports on time for regularly scheduled work and has not been notified to remain away from work shall be worked as scheduled, or in lieu thereof, shall be sent home immediately and receive an allowance of four (4) hours' pay at his base rate plus applicable shift differential, if any.

Section 7. In the case of death of a member of the immediate family of an employee the PLANT will grant as an excused absence such time as may be needed in connection therewith. A maximum of three (3) working days from the day of death to and including the day after the funeral but in no case extending beyond the day after the funeral which are regularly scheduled days of work for the employee shall be paid for at the employee's regular rate for the number of hours that would normally have been scheduled for that day, but such hours paid for shall not be considered as hours worked in computing overtime payable for hours worked in excess of forty (40) in any work week nor shall such days be counted as days worked in determining whether an employee has worked a sixth or seventh day in the regularly scheduled work week.

For the purpose of this Section, a member of the employee's immediate family shall be limited to father, mother, husband, wife, brother, sister, son, daughter, mother-in-law or father-in-law. No more than three (3) days' pay shall be given should more than one (1) death occur in the family within any three (3) day period.

An employee who is excused from work to attend the funeral service in connection with the death of his grandparent, grandchild, son-in-law, daughter-in-law, brother-in-law, or sister-in-law shall be paid his regular rate of pay

for regularly scheduled hours of work up to a maximum of eight (8) hours. Brother-in-law and sister-in-law are defined as the spouse of the employee's brother or sister and the brother or sister of the employee's spouse.

No leave or allowance shall be granted in the case where, because of distance or other cause, the employee does not attend the funeral of deceased. Notice of such deaths must be given to the employee's supervision as soon as is reasonably possible.

ARTICLE XIII

Severance Pay

Section 1. The receipt of severance pay provided under this Article is conditioned upon the separation of an employee from the employment rolls as terminated because of lack of work during the term of this Agreement.

Section 2. An employee who has one (1) year or more of service shall be paid severance pay each time he is terminated because of lack of work, except that such pay will not be paid when:

(a) He accepts, before his termination becomes effective, a job at any COMPANY location; including a site of a wholly owned subsidiary.

(b) He is pensioned; except when his employment would otherwise be involuntarily terminated due to lack of work and he retired

under Section IV of the Pension and Retirement Plan provision for Optional Retirement. This exception will not apply if he retires and part (d) below also applies.

(c) He resigns, is discontinued, enters Military Service or is discharged.

(d) He is offered continued employment at the Plant in conjunction with a sales agreement between the Company and a buyer of company assets and:

1) He accepts the employment offer with the buyer or
2) He rejects the employment offer with the buyer unless
   - The offer is not at a pay level equal to or greater than 80% of the employee's Du Pont regular wage or salary level, or
   - His rejection results in a job offer for another employee who would not otherwise have received an offer.

This Section (2d) will not apply to prohibit the payment of Severance Pay based on service credited before January 1, 1986.

(e) He elects termination in lieu of demotion because of lack of work. However, a mechanic will not be required to take a job involving a reduction in pay of more than 10%. In that case he will have the choice of the lower rated job or termination with severance pay.

(f) He is scheduled off from work tem-

porarily due to curtailment or cessation of operation caused by:

1. Fire, flood, power failure, transportation difficulties, material shortages, and the like;
2. Any emergency condition beyond the direct control of Management.

When an employee is "scheduled off" for such a reason for a definite or an indefinite temporary period he shall not be considered as terminated for the purpose of this Article; or

(g) Operations cease or are curtailed by reason of a strike or other labor dispute, whether or not the PLANT is involved directly or indirectly in such strike or dispute.

Section 3. The PLANT may elect to pay severance pay in a lump sum or in weekly installments.

Section 4. Severance pay, if being paid in weekly installments, shall be discontinued when a former employee is reemployed at any COMPANY plant including a site of a wholly owned subsidiary or is offered and refuses reemployment at the PLANT.

Section 5. The amount of an employee's severance pay, subject to the foregoing provisions of this Article, shall be:

(a) One (1) week's pay for each of the first four (4) years of service, plus

(b) One (1) week's pay for each year of service over four (4) reduced by the amount of

any severance pay previously paid at any COMPANY location for service over four (4) years. However, this reduction shall be reduced in monthly increments to zero over a forty-eight (48) month period of reemployment from last termination for lack of work.

A fractional part of a year, after his first year of service, shall be computed at the rate of one-twelfth (1/12) of one (1) week's pay for each full month of service. In such computation, if, in addition to full months of service, an employee has accrued fifteen (15) or more days on the date he is terminated, he shall be credited with a full month.

For severance pay purposes, a week's pay shall be the employee's current regular rate per hour multiplied by the number of hours, not to exceed forty (40) hours, constituting his regular weekly hours of work at the time of his termination.

Section 6. An individual who has received severance pay shall not be required to return any portion of such pay to the PLANT in the event he is reemployed.

Section 7. Severance pay shall be in addition to any vacation allowance and any unemployment compensation benefits to which the employee may be entitled.

Section 8. Nothing contained in this Article shall be deemed to qualify, limit or alter in any way the PLANT'S right to establish or change

or reduce hours of work, reschedule vacations or reassign employees to other jobs to avoid terminations because of lack of work.

Section 9. Wherever the term "service" is used in this Article, it shall mean continuous service of an employee as defined and calculated under the COMPANY'S Continuity of Service Rules.

ARTICLE XIV

Hospital and Medical Surgical Provisions

Section 1. The PLANT will make available to employees the dual choice option as provided by the Health Maintenance Organizations (HMO) Act of 1973, and amended in 1976.

Section 2. The PLANT will pay to Blue Cross and Blue Shield of Delaware, Inc., or the Hospital Service Plan of New Jersey and Medical-Surgical Plan of New Jersey, or the Blue Cross of Greater Philadelphia and the Pennsylvania Blue Shield, the premium for hospital and medical-surgical coverage, as set forth in the contract between the COMPANY and the respective carriers, if the employee enrolls for such coverage. No duplicate premium will be paid for any spouse who is also an employee of the COMPANY.

Section 3. If an employee elects the HMO option as provided in Section 1 of this Article,

the Plant will pay to the Health America HMO of Philadelphia, Pennsylvania, Delaware Valley HMO, CIGNA Healthplan of Delaware or the HMO of Delaware (BC/BS) the HMO premium provided, however, that no duplicate premium will be paid for any spouse who is also an employee of the COMPANY.

Section 4. For those identified in Section 2 of this Article and enrolling for the comprehensive extended benefits or major medical coverage offered by the aforementioned carriers, and who authorize the deduction from their wages of the amount of the premium for such additional coverage, the PLANT will deduct that amount from their wages. No portion of the premium for the comprehensive extended benefits or major medical coverage is to be paid by the PLANT.

ARTICLE XV

Miscellaneous Provisions

Section 1. Whenever practical, the PLANT will discuss with the UNION work deemed necessary to require outside contractors.

Section 2. The established Plant practice with respect to providing clothing for employees in effect on the day this Agreement is signed shall be continued, reserving, however, the right of the UNION or the PLANT to review and change these practices at any mutually convenient time.

Section 3. No detrimental notation shall be made on the employee interview record of an employee or other record that serves the same purpose unless the employee, and his UNION representative if the employee so desires, is notified that such notation is to be made and an opportunity is given the employee to present any reason why such notation should not be made.

ARTICLE XVI

Bulletin Boards

Bulletin boards will be made available to the UNION at mutually agreed upon locations. Notices shall be restricted to the following types:

1. Notices of UNION recreational and social affairs;
2. Notices of UNION elections, appointments, and results of elections;
3. Notices of UNION meetings; and
4. Minutes of meetings of UNION membership, and minutes of meetings with the PLANT.

ARTICLE XVII

Suspension of Provisions of Agreement

If, during the life of this Agreement, there shall be in existence any applicable law, or any applicable rule, regulation, or order issued by Governmental authority, which shall be incon-

sistent with any provision of this Agreement, such provision shall be modified to the extent necessary to comply with such law, rule, regulation or order.

ARTICLE XVIII

Expiration or Cancellation

Section 1. This Agreement shall continue in full force and effect until terminated by either party with sixty (60) calendar days' advance notice in writing.

Section 2. If either party desires to modify or change this Agreement, it shall give notice in writing of the desire to modify or change. If notice to modify or change is thus given by either party, the Agreement shall be deemed to have been opened for bargaining on any or all provisions or on any new provisions. After the provisions of this Section 2 have been invoked, all the provisions of this Agreement shall continue in full force and effect unless and until modified in accordance with this Section.

IN WITNESS WHEREOF the PLANT and the UNION have caused these presents to be executed by their duly authorized representatives on the 1st day of September, 1987.

E. I. DU PONT DE NEMOURS AND COMPANY

By _____
John S. Kloss
Plant Manager

DU PONT EDGE MOOR UNION

By _____
James R. Golden
President

By _____
Gary R. Myers
Vice President

By _____
Hugh Morris, III
Chairman Contract Committee

Witness:

_____
Lloyd D. Baker

_____
Dennis P. Malloy

AGREEMENT

between

E. I. du Pont de Nemours and Company

and

PAPER, ALLIED-INDUSTRIAL, CHEMICAL AND ENERGY WORKERS INTERNATIONAL UNION (P.A.C.E.)

at

Edge Moor, Delaware

JUNE 1, 2000

to

May 31, 2003

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AGREEMENT

Effective the 1st day of June, 2000 by and between E. I. DU PONT DE NEMOURS AND COMPANY, INC., on behalf of its Edge Moor Plant, Edgemoor, Delaware, hereinafter referred to as the Plant or Management, and the PAPER, ALLIED-INDUSTRIAL, CHEMICAL AND ENERGY WORKERS INTERNATIONAL UNION (P.A.C.E.) and its LOCAL 2-786, Edgemoor, Delaware, hereinafter referred to as the Union, acting for and on behalf of itself and of all employees of the said Edge Moor Plant with the exception of the Administrative Secretary to the Plant Manager, Human Resources Assistant, Technologists (Training, Planning, DCS), Work Leader, Nurses, salary roll employees exempt under the Fair Labor Standards Act, and supervisory employees with the authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action,

WITNESSETH:

ARTICLE I

Purpose of Agreement

Whereas, it is the intent and purpose of the Union and the Plant to promote and improve industrial and economic relationships between the employees and the Plant, and to set forth the basic agreement covering conditions and terms of employment, the parties hereto agree with each other as follows:

ARTICLE II

Definitions

Section 1. The term "Plant," as used herein, shall mean the Edge Moor Plant and the Management of the Edge Moor Plant of E. I. du Pont de Nemours and Company, White Pigments and Mineral Products, located at Edge Moor, Delaware.

Section 2. The term "Company" shall mean the corporate entity of E.I. du Pont de Nemours and Company, located in Wilmington, Delaware.

Section 3. The term "Union," as used herein, shall mean the Paper, Allied-Industrial, Chemical and Energy Workers International Union (P.A.C.E.) and its Local 2-786.

Section 4. Unless specifically qualified, the term "employee" or "employees", as used herein, shall mean those employees of the Plant included within the bargaining unit set forth in the preamble to this Agreement.

Section 5. The term "base rate" as used herein with respect to a non-exempt salaried employee shall mean the established hourly rate for the employee on his regular job, excluding shift differential and all other payments, and shall be calculated in accordance with the following formula:

$$\frac{\text{Established Monthly Salary} \times 12 \text{ Months}}{52 \text{ Weeks} \times 40 \text{ Hours Per Week}} = \text{Base Rate Per Hour}$$

Section 6. An employee's "regular rate" as used herein shall mean the base rate, plus any applicable shift differential.

Section 7. The term "regularly scheduled working hours", as used herein, shall mean the hours which the employee has been assigned to work regularly.

Section 8. The term "holiday" as used herein shall mean any one of the holidays listed in Article XII, Section 1 of this Agreement, or the day observed in lieu thereof.

Section 9. When the term "employee(s)" or a personal noun or pronoun appears in the agreement, it shall be understood to refer to either the masculine or feminine gender or both as applicable in the context in which it appears.

Section 10. For purposes of this agreement, the term "day(s)" shall mean calendar day(s) unless otherwise stated.

ARTICLE III

Recognition and Scope

Section 1. The Union has been and is recognized by the Plant as the exclusive bargaining agent for the employees of the Edge Moor Plant for the purpose of collective bargaining with respect to rates of pay, wages, hours of work, and other conditions of employment. Nothing contained in this Agreement, however, shall limit the rights of individuals as set forth in Section 9 (a) of the Labor-Management Relations Act.

Section 2. There shall be no discrimination, coercion, interference, or restraint by the Plant or by any of its agents against any employee because of membership or non-membership in the Union; and the Union agrees that there shall be no meetings or solicitation or promotional Union activity on Plant time. Plant time shall not include break periods, meal times, and other specified periods during the workday when employees are properly not engaged in performing their work tasks.

Section 3. This Agreement constitutes the entire Agreement between the parties hereto as of the execution date hereof. However, any existing supplements listed in Appendix A to this Agreement, and any supplements which may hereafter be mutually agreed upon by the Plant and the Union, when executed in the same manner as this Agreement, shall become and be a part of this Agreement.

Section 4. In consideration of the Union's execution of this Agreement, in the event that the operations covered by this Agreement are conveyed, or otherwise transferred or assigned to any successor, the Plant shall notify the successor of the existence of this Agreement.

ARTICLE IV

Management Responsibilities

Section 1. The Union recognizes that the Plant has the exclusive responsibility, whether or not the same was exercised heretofore, for the management, operation and maintenance of its facilities, and in furtherance thereof, has the right to select for hire, direct the work force, schedule work, establish schedules of work hours and shifts, determine what work is to be done, what products are to be produced and by what methods and means, to determine the size of the work force, to locate or remove any portion of the facilities, to expand, reduce, combine, transfer or abandon any area or operation, to establish and change job qualifications and classifications and to issue and revise job descriptions, and such shall not be subject to grievance and arbitration.

Except the Plant shall not, in exercising its rights to direct the work force, to establish work hours and shift schedules, and to assign and reassign work, violate the other express provisions of this Agreement. Any such violations shall be subject to the grievance and arbitration procedures of this Agreement.

In exercising its other management responsibilities, the Plant shall comply with the express provisions of this Agreement, subject to the grievance and arbitration procedures.

Section 2. The Plant may establish and revise reasonable work and safety rules as it deems necessary or desirable, provided they do not conflict with any term or provision of this Agreement. A copy of such rules shall be sent to the Union at least twenty (20) days prior to the

rules going into effect, and the Union will be given the opportunity to meet and discuss proposed rules during this period prior to implementation.

Section 3. The Plant has the right to arrange for work to be done by other companies, third parties, or other locations of the Company, and such shall not be subject to grievance and arbitration. Whenever practical, the Plant will discuss with the Union any types of work deemed necessary to require other companies or third parties or other locations of the Company. A log will be maintained by the Plant to record all non-capital work performed on-site or sent off-site by/to other companies or third parties. The Union will periodically review this log on a weekly basis and discuss with Plant Management as needed. These latter administrative tasks may be subject to the grievance and arbitration procedures.

Section 4. No agreement, alteration, understanding, variation, waiver or modification of any of the terms or conditions expressly contained in this Agreement shall be made by any employee or group of employees with the Plant, and in no case shall it be binding upon the parties hereto unless made and executed in writing between the parties to this Agreement. However, this Section shall not affect the continued use of the Plant's standard form restrictive covenant/confidentiality agreement.

Section 5. The Plant's failure to exercise any retained right of management shall not be considered a waiver of such right.

Section 6. Management shall not perform any work normally done by bargaining unit employees, except in the case of emergency, for short periods associated with instructing or training, for work related to the installation or implementation of new processes or procedures, or

when such work is incidentally related to the inspection of equipment or correcting production difficulties. However, Management may be permitted to relieve an employee at his/her request for short periods not to exceed thirty (30) minutes.

ARTICLE V

Deduction of Unions Dues

Section 1. The Plant will deduct the regular dues prescribed by the Union from the salary of an employee who authorizes the Plant to make such deductions on a form identical in wording to that appearing in Section 2 of this Article. Such dues authorizations shall be canceled and deductions stopped in accordance with the provisions of the dues authorization forms or at the option of the Plant at the termination of this Agreement.

All sums deducted in this manner and a list of employees from whose earnings such deductions have been made shall be turned over by the Plant to the Treasurer of the Union.

Section 2.

E. I. DU PONT DE NEMOURS AND COMPANY
EDGE MOOR, DELAWARE

I hereby revoke any previous Union dues deduction authorization and hereby authorize you to deduct from my salary after 40 hours' pay has been earned in any calendar month and pay to the Treasurer of the PAPER, ALLIED-INDUSTRIAL, CHEMICAL AND ENERGY WORKERS INTERNATIONAL UNION (P.A.C.E.) LOCAL 2-786, the amount of my monthly dues and initiation fees in said Union. This authorization shall be canceled and deductions stopped by the Plant if:

I am no longer employed within the bargaining unit represented by the Union, or

The Union is no longer recognized by the Plant, or

I give written notice of cancellation of such authorization to the Plant.

NAME _____ SSN_____

DATE _____ WITNESS _____

Section 3. The Union shall indemnify and hold the Plant harmless from any claims, actions or proceedings arising from this Article. After the funds have been remitted to the Union, the sole and exclusive obligation and responsibility for their disposition shall fall upon the Union.

ARTICLE VI

Grievance Procedure

Section 1 -- Definition of Grievance. During the term of this Agreement, a grievance is: (1) an allegation by an employee or the Union that the Plant has violated an express provision of this Agreement as defined in Section 3 of Article III; (2) any other dispute between the Plant and the Union or employees concerning terms or conditions of employment. In the event that a dispute or grievance shall arise between the Plant and the Union or employees, an earnest effort shall be made to settle such dispute or grievance, provided it is reduced to writing to the Plant within twenty-five (25) days of the incident causing the grievance.

Section 2 -- Procedure.

(a) Step 1 - Verbal Discussion with Team Manager. The employee involved shall first attempt to resolve the grievance with his/her Team Manager. The employee may, at his/her option, be accompanied by a Union Representative in the discussion of the grievance with the Team Manager. Any resolution of the grievance at Step 1 shall be on a non-precedential basis and shall not be binding upon the parties in connection with any other grievance or be construed to modify this Agreement in any way. Note: For historical purposes only, the Union's Grievance Chairman and Plant Human Resources shall be provided a copy of any informal agreement that is reduced to writing. No resolution of a grievance will be made without a Union representative having been given the opportunity to be present.

(b) Step 2 - Written Grievance to Area Manager. If the grievance is not resolved at Step 1, the employee or the Union must submit a written grievance to the Area

Manager or designee. Within fourteen (14) days of receipt of the written grievance, the Area Manager or designee shall meet with the employee and a Union Representative to discuss the matter and give a written response to the grievance.

(c) Step 3 - Written Appeal to Unit Manager. If the grievance is not resolved at Step 2, the employee or the Union must submit a written appeal to the Unit Manager or designee within seven (7) days of receipt of the Area Manager's response, or the Area Manager's failure to respond. Within fourteen (14) days of receipt of such appeal, the Unit Manager or designee shall meet with the employee, and up to three (3) members of the Union's Grievance Committee and a representative of the International Union. The Unit Manager or designee shall give a written response to the appeal within fourteen (14) days after such meeting.

(d) Arbitration. Within forty-five (45) days of receipt of the Unit Manager's written response in Step 3, or the Unit Manager's failure to respond, the Union may initiate arbitration in accordance with the procedures set forth in Article VII of this Agreement.

(e) Any grievance involving a suspension or discharge shall be submitted directly to Step 3 within fourteen (14) days of the imposition of the discipline in order to be subject to the terms of this Agreement.

Section 3 -- Time Limitations. The time limitations contained herein shall be considered as a maximum and may be extended only by mutual consent of the parties in writing or electronically. The Plant's failure at any Step in this procedure to communicate a decision on the grievance within the specified time limits shall permit the aggrieved employee or the Union to proceed to the next Step. Any grievance not appealed to the next Step within the time limits

specified in this Article shall be deemed to be settled. Note: When a grievance is filed by a shift worker, the parties will make every effort to comply with the time frames to hear and answer the grievance.

Section 4 -- Written Presentation. All grievances at Step 2 and Step 3 shall be signed and dated by the aggrieved employee(s) and/or a Union Representative. Written answers submitted by the Plant shall be signed and dated by the appropriate Plant representative.

Section 5 -- No Loss of Pay. Any employee or representative of the Union who participates during his/her working time in any grievance meeting shall do so with no loss of pay, so long as the employee is first released by his/her supervisor or area manager before leaving his/her place of work. Such permission shall not be unreasonably withheld. Where a grievance involves more than one aggrieved employee, no more than two (2) will be allowed time off during work hours without loss of pay to participate in the above procedure.

Section 6 -- Additional Management Representative. At the Plant's option, a second management representative may attend the Step 2 or Step 3 meetings.

ARTICLE VII

Arbitration

Section 1. Any question as to the interpretation, or any alleged violation, of any provision of this Agreement, as defined in Section 3 of Article III, which is not otherwise settled to the mutual satisfaction of the parties hereto, at the request of either party, shall be submitted to arbitration in the manner provided in Section 2 of this Article. Unrelated multiple alleged violations or grievances cannot be submitted to arbitration in the manner provided in Section 2 of this Article unless the parties specifically agree thereto.

Section 2. The parties shall meet within five (5) calendar days after notice of a desire to arbitrate is received for the purpose of agreeing upon the issue or issues to be arbitrated.

If, within seven (7) calendar days following the initial meeting, the parties cannot agree upon, and sign, a submission agreement, the proceedings may be initiated by the party requesting arbitration giving a statement in writing to the other party specifying only the question it wishes to submit to arbitration and the provision or provisions of the Agreement it believes to be involved therein. If the other party does not believe that the party requesting arbitration has correctly specified the question, or the provision or provisions involved, it shall submit to the party requesting arbitration within seven (7) calendar days following the receipt of the said statement from the party requesting arbitration, its own statement specifying only the question and the provision or provisions it believes to be involved.

An Impartial Arbitrator shall hear and resolve the matter and be furnished with a copy of the submission agreement or copies of the statements of both parties. The Impartial

Arbitrator shall be selected from a panel or panels submitted to the parties' representatives by the American Arbitration Association (Philadelphia Office), consistent with the AAA's standard selection procedures.

The Impartial Arbitrator shall then confer with the parties' representatives to determine a time and place for the hearing. The decision of the Impartial Arbitrator shall be final and binding upon the parties. The Impartial Arbitrator shall render his/her written opinion and award within thirty (30) days following the closing of the record of the arbitration hearing, unless otherwise agreed by the parties in writing.

The jurisdiction and authority of the Impartial Arbitrator to make an award shall be confined to the interpretation or application of the provisions of this Agreement. The Impartial Arbitrator shall not have jurisdiction or authority to make an award which has the effect of amending, altering, enlarging or ignoring any section of the Agreement or establishing or revising rates of pay; nor shall he/she have jurisdiction or authority to determine that the parties by prior practice or implication have amended or added to this Agreement.

The fees and expenses of the Impartial Arbitrator, the fees of the American Arbitration Association, and the cost of the hearing room shall be borne equally between the Union and the Plant.

ARTICLE VIII

Discharge

Section 1. The Plant agrees that no employee will be discharged except for just cause. Such cases of discharge or suspension will be discussed with a representative of the Union before final action is taken. The employee involved may attend such discussions if he wishes.

Section 2. When an employee has been discharged or suspended from work, and believes that he has been unjustly discharged or suspended, such employee shall be allowed fourteen (14) days within which to register a complaint and such complaint shall be considered and dealt with in accordance with the provisions of Article VI, "Grievance Procedure," beginning at the Step 3. For the arbitration of a discharge case, the arbitration hearing will be scheduled to be held within two (2) months of the appointment of the Impartial Arbitrator.

Section 3. If it is found at the conclusion of the arbitration procedure by an Impartial Arbitrator that an employee has been unjustly discharged or suspended, the Plant shall reinstate and compensate such employee for time lost at his regular rate, including scheduled overtime allowance, and any applicable interim rate increases; provided, however, such period of payment shall not exceed nine (9) calendar months. The employee also shall be restored with all seniority rights and service credit for all time lost.

ARTICLE IX

Industrial Relations Plans
and Practices

Section 1. All existing privileges heretofore enjoyed by the employees in accordance with the following Industrial Relations Plans and Practices of the Company shall continue, subject to the provisions of such Plans and to such rules, regulations and interpretations as existed prior to the signing of this Agreement, and to such modifications thereof as may be hereafter adopted generally by the Company to govern such privileges; provided, however, that as long as any one of these Company Plans and Practices is in effect within the Company, it shall not be withdrawn from the employees covered by this Agreement; and provided, further, that any change in the Industrial Relations Plans and Practices which has the effect of reducing or terminating benefits will not be made effective until one (1) year after notice to the Union by the Plant of such change:

Career Transition Financial Assistance Plan
Short Term Disability Plan
Pension and Retirement Plan
Special Benefits Plan
Vacation Plan
Service Emblem Plan
Continuity of Service Rules
Treatment of Employees Called or Enlisting for Military Service
Payment to Employees on Jury Duty
Savings & Investment Plan
Total & Permanent Disability Income Plan

Section 2. An employee's length of service for consideration of benefits under the Company's Industrial Relations Plans and Practices shall be the employee's continuous service with the Company, as calculated in accordance with the Company's Continuity of Service Rules.

Section 3. In addition to receiving benefits pursuant to the Plans set forth in Section 1 above, employees shall also receive benefits as provided by the Company's Beneflex Benefits Plan, subject to all terms and conditions of said Plan.

ARTICLE X

Seniority

Section 1. Seniority of an employee placed on the Edge Moor Plant roll shall be calculated and adjusted beginning with the first day he worked in the last period of his unbroken employment on the Edge Moor Plant, in accordance with provisions (a), (b), and (c) of this Section.

(a) When a former employee is re-employed following his termination because of lack of work, he shall immediately regain the seniority he had accrued prior to his termination. It is understood that no seniority credit will be given for the period of time between termination and re-employment, and it is further understood that the seniority a former employee had at the time of termination because of lack of work shall be used only for the purpose of giving consideration to re-employment during a period limited to two (2) years following such termination.

(b) An employee whose break in length of service is cured by action of the Plant, shall regain or be credited with the amount of seniority equivalent to the length of service credit of the cure, provided that such cured service must have been for time worked on the Edge Moor Plant in order to be credited as seniority.

(c) The seniority of an employee shall be adjusted by deducting the time lost due to leave of absence without pay, except that time lost or leave of absence granted because of illness or injury or military service will not be deducted.

Section 2. The seniority of an employee shall be automatically broken and terminated in case of:

1. Discharge for just cause;
2. Discontinuance;
3. Voluntary quit;
4. Termination because of lack of work;
5. Absence in excess of sixteen (16) consecutive days not covered by leave of absence; or
6. Failure to return to work following expiration of leave of absence.

Section 3. In matters affecting terminations because of lack of work, bumping during a reduction of force, transfers, demotions and promotions of employees and re-employment of former employees, including temporary assignment of expected duration longer than three (3) months, the following factors shall apply:

1. Seniority;
2. Ability, skill, efficiency, knowledge and training; and
3. Physical fitness to perform the essential functions of the job, with or without reasonable accommodation (only in cases of re-employment, transfers, demotions and promotions).

In cases where the candidates have approximately the same qualifications as determined by factors (2) and (3), seniority shall govern.

Section 4. (a) Permanent job openings in the bargaining unit will be posted from Tuesday to Tuesday (3:30 p.m. to 3:30 p.m.) the following factors will apply:

1. Seniority;
2. Ability, skill, efficiency, knowledge and training; and
3. Physical fitness to perform the essential functions of the job, with or without reasonable accommodation (only in cases of re-employment, transfers,, demotions and promotions).

In cases where the candidates have approximately the same qualifications as determined by factors (2) and (3), seniority shall govern.

(b) The applicant who accepts and is awarded a posted job based on qualifications and seniority must go to that posted job unless:

1. 180 calendar days have elapsed without the applicant being moved to the job, at which time he will be afforded a ninety-six (96) hour opportunity to withdraw his application. The applicant will be given subsequent opportunities to withdraw his application at 30 day intervals if movement has not taken place.

2. He becomes the successful applicant on another posted job.

(c) Temporary job openings which are expected to exist for longer than three (3) months will be posted according to the same procedure as permanent jobs.

(d) Temporary jobs shorter than three (3) months' duration, and temporary jobs pending the transfer of the successful applicant for a posted job, will be filled by an employee deemed qualified by the Plant.

Section 5. A successful applicant who does not perform satisfactorily in the judgment of the Plant on his new job during a trial period of ninety (90) calendar days or less, will go back to his former job, and all other moves that were made as a result of the opening will revert to their former status.

Section 6. An employee who is or has been transferred out of the bargaining unit into a non-bargaining unit position, and who is later forced out of his position and seeks to return to the bargaining unit, shall be credited with seniority for all time spent both inside and outside the

bargaining unit and that seniority will be used for purposes of bidding into a vacant bargaining unit position that has been posted. However, during the first year after returning to the bargaining unit pursuant to this Section, only plant seniority within the bargaining unit will be used for purposes of reductions of force and related job bumping.

Section 7. Should any difference arise with respect to the promotion, demotion, termination because of lack of work, or transfer of an employee, or re-employment of a former employee, such difference may be treated as a grievance under Article VI of this Agreement. Promotions to supervisory positions or to jobs outside the scope of this bargaining unit shall be solely a function of the Plant, and, therefore, such action shall not be subject to the terms of this Agreement.

Section 8. A new employee shall not benefit from seniority provisions during the first six (6) calendar months of service, but after completion of the first six (6) calendar months of service, his seniority shall be established as of hiring date.

During this probationary period of six (6) calendar months, a new employee may be terminated in the sole discretion of the Plant, and such action shall not be subject to the terms of this Agreement.

ARTICLE XI

Hours of Work and Overtime Premiums

Section 1. Provisions Applicable to all Employees Covered by this Agreement:

(a) The regular workday for 12 hour shift employees shall begin at 6:00 A.M. and shall end the following day at 6:00 A.M., and for day employees shall begin at 7:00 A.M. and shall end the following day at 7:00 A.M., except in cases where the Plant may designate otherwise with respect to any individual employee or group of employees.

(b) The regular workweek for 12 hour shift employees shall begin Monday at 6:00 A.M., and for day employees shall begin Monday at 7:00 A.M., and shall end the following Monday at the same hour, except in cases where the Plant may designate otherwise with respect to any individual employee or group of employees.

(c) The working hours of day employees shall be from 7:00 A.M. to 3:30 P.M., with one-half hour unpaid lunch period. The working hours of 12 hour shift employees shall either be from 6:00 A.M. to 6:00 P.M., or from 6:00 P.M. to 6:00 A.M., with one-half hour paid lunch period. Schedules other than these may be established by the Plant and will be discussed with the Union.

(d) For the purpose of determining the sixth or seventh day worked in a workweek, an employee shall be considered to have performed a day's work when:

(1) The employee works his regularly scheduled working hours in a workday;

(2) On any workday, the employee works any time or reports for assigned work and is sent home because of lack of work or other reason beyond his control, provided that if the employee in either of these cases absents himself for any part of his full schedule of work without justifiable cause as determined by the Plant, that day shall not be counted as a day worked;

(3) On any holiday which falls on a day in the employee's regular schedule of work in that work week and occurs prior to the sixth day worked, and the employee is required to take the day off solely because it is a holiday; provided, however, that a holiday occurring on an employee's day of rest shall not be counted in determining the sixth or seventh day worked in a work week. If the employee scheduled to work on such a holiday is absent, he shall not receive credit for it as a day worked;

(4) An employee works beyond his normal shift into his regularly scheduled day of rest to the extent of four (4) or more hours. In no case shall an employee receive credit for more than one (1) day worked in any workday.

(5) Vacation occurring prior to hours over 40, or 6th or 7th day

(6) Emergency military duty occurring prior to hours over 40, or 6th or 7th day

(7) Jury duty

Section 2. Overtime Provisions for non-exempt salaried employees:

(a) Overtime shall be paid at one and one-half (1 ½) times the employee's regular rate. When more than one rate is applicable to the same hours of work, the rates shall not be pyramided, but only the highest single rate applicable shall be paid. When one and one-half (1 ½), two (2), or two and one-half (2 ½) time rates are paid for hours worked, such hours will be considered overtime hours.

(b) For day workers, overtime shall be paid for:

(1) All hours worked in excess of eight (8) hours in any workday, or in excess of forty (40) hours in any work week, whichever provision produces the greater amount of pay;
(2) All hours worked on the sixth day worked in a work week, subject to provisions of Section 1(d)(3) of this Article;
(3) All consecutive hours worked by a vacation relief employee in excess of eight (8) straight time hours in any consecutive twenty-four (24) hour period.
(4) Work outside of regularly scheduled working hours, except when the hours worked outside the schedule are at the employee's request.

(c) For day workers, overtime pay at two (2) times the employee's regular rate shall be paid for all hours worked on the seventh day worked in the work week.

(d) For twelve (12) hour shift employees

(1) Employees working 12 hour shifts shall be paid pursuant to the following table:

WEEK IN WHICH THE FOLLOWING SCHEDULE IS WORKED							TOTAL HOURS WORKED	TOTAL HOURS PAID
MON	TUES	WEDS	THURS	FRI	SAT	SUN		
1	1	1	1				48	52
				2	2	2	36	42
2				1	1	1	48	54
	2	2	2				36	36

(2) Employees working 12 hour shifts shall be eligible for overtime pay for additional hours worked under the following circumstances:

(i) All hours worked in excess of twelve (12) in any workday.

(ii) Work outside of regularly scheduled working hours, except when the hours worked outside the schedule are at the employee's request.

(iii) Employees working the three (3) day or thirty six (36) hour workweek:

(A) Day Four — Employee receives time-and-a-half his regular rate;

(B) Day Five — Employee receives double his regular rate for hours worked;

(C) Day Six — Employee receives time-and-a-half his regular rate;

(D) Day Seven — Employee receives time-and-a-half his regular rate.

(iv) Employees working the four (4) day or forty eight (48) hour workweek:

(A) Day Five — Employee receives time-and-a-half his regular rate;

(C) Day Six — Employee receives double his regular rate for hours worked;

(D) Day Seven — Employee receives time-and-a-half his regular rate.

Section 3. Assignment of Overtime. The Plant reserves the right to schedule and require overtime work to the extent it deems necessary or desirable.

Overtime opportunities will be offered first to the senior eligible qualified employee(s) on the overtime list within the work group in which the overtime opportunity occurs. An employee may refuse to work overtime if there are sufficient qualified junior employees available within that work group. The least senior qualified employee(s), however, shall be required ("forced") to perform overtime work, should the other, more senior employees to which it is offered refuse. Forced overtime will rotate in reverse seniority (junior person up), in order to equalize the assignment of forced overtime.

Employees forced to work overtime will be provided with a minimum of four (4) hours of work, if so desired by the employee. Employees will not be forced to work more than sixteen (16) hours of overtime per week. Employees will not be forced to work overtime in the event of a personal emergency off-Plant, provided that this is not abused.

The Plant shall provide an employee with transportation to his local residence when he is released from "forced" overtime work, provided the employee has no other means of transportation.

In the event that the Plant, as a result of a good faith error, fails to offer overtime to the appropriate employee in accordance with the above outlined procedure, that employee

shall be offered "make up" overtime work, scheduled at a mutually convenient day and time; the employee will perform any work assigned.

Section 4. The Plant retains the right to assign overtime outside of the above-outlined procedure in the event of an emergency.

Section 5. (a) Any employee receiving an overtime opportunity by telephone who fails to answer the call shall be considered to be unavailable for the opportunity. The Plant will leave a message, if applicable. The Plant is not required to wait for a response. Nothing in this section shall be construed to require that the Plant do more than call an employee's home telephone number to offer the overtime opportunity.

(b) All qualified employees in the appropriate work group will be called before subcontractors are assigned to do the work.

Section 6. Working Through Lunch Period. If an employee is asked by the Plant to work through an unpaid lunch period and completes his full scheduled day, the employee has one of the following options with concurrence of supervision:

(a) Leave early the same day (30 minutes).

(b) Take regular pay i.e. eight hours straight time plus ½ hour overtime.

(c) Take the time (30 minutes x 1.5) off on another day during the same work week.

(d) Employees working through lunch will be given a lunch break following their completed assignment.

Section 7. All qualified employees within the work group will be called before a temporary supervisor is called in for the purpose of performing overtime work within his/her

skill. A nonexempt plant employee is considered a temporary supervisor from the time he/she receives detailed rate until he/she is returned to his/her normal duties, i.e., when the supervisor returns.

Section 8. If employees work outside their work group on either holdover, call-in or scheduled overtime, they remain eligible for overtime in accordance with Section 3.

Section 9. Holdover/Job Continuity – Employee(s) working on the job, if needed, will be asked to work overtime first. If additional help is required, the opportunity to work will be offered consistent with the procedures described in Section 3, above.

Section 10. No overtime shall be paid unless such overtime work has been specifically authorized by Plant management.

Section 11. Wash-Up Time. A five (5) minute wash up period will be provided to all employees prior to break time, lunch time and quitting time.

Day employees working in the field will be permitted back in their shops at 11:55 a.m. and will normally leave their job sites at 11:50 a.m. However, appropriate travel time will be afforded for those working in remote areas.

Employees leaving the Site for lunch or at quitting time may do so 5 minutes before Lunch and Quitting Time, in lieu of wash-up time.

ARTICLE XII

Holiday Pay

Section 1. A non-exempt salaried employee who works on any of the holidays designated below shall be paid overtime pay at one and one-half (1 ½) times his regular rate for all hours worked in addition to a holiday allowance equivalent to pay for regularly scheduled working hours not to exceed eight (8) hours at his regular rate; or he shall be paid overtime pay at two and one-half (2 ½) times his regular rate for such holiday hours worked, whichever yields the greater pay:

New Year's Day

Good Friday

Memorial Day

July Fourth

Labor Day

Thanksgiving Day

Day After Thanksgiving Day

December 24th

Christmas Day

Two (2) Personal Holidays

When any of the foregoing holidays, except December 24th, falls on Sunday, the following Monday shall be observed as the holiday by all employees regularly scheduled to work on a Monday through Friday basis. When December 24th falls on Sunday, the following

Tuesday shall be observed as the holiday by all employees regularly scheduled to work on a Monday through Friday basis.

When any of the foregoing holidays falls on a Sunday, the holiday shall be observed on a Saturday for non-exempt salaried employees working the holiday. The exception to this is if Christmas day falls on a Sunday. In that case, the holiday shall be observed on the preceding Friday for non-exempt salaried employees who work on the holiday.

When any of the foregoing holidays fall on Saturday, the preceding Friday shall be observed as the holiday by all employees regularly scheduled to work on a Monday through Friday basis. All other employees will observe such holiday on Saturday. When Christmas Day falls on Saturday and is observed on Friday, the December 24th holiday will be observed on the preceding Thursday.

Holiday hours shall coincide with the regular workday, as defined in Section 1 of Article XI.

Section 2. Pay for hours equivalent to regularly scheduled hours not to exceed eight (8), at the employee's regular rate, shall be paid to an hourly wage roll employee for a holiday on which he does not work, provided such employee:

(a) Does not work the holiday for the reason that

(1) He is required by Management to take the day off from work solely because it is a holiday, or

(2) The holiday is observed on one (1) of his scheduled days of rest (an employee on vacation, leave of absence without full pay, or absent from work for one (1) week or more due to a shutdown of equipment or facilities or conditions beyond Plant's control, shall

not be considered as having "scheduled days of rest" during such periods of absence), and

(b) Works on his last scheduled working day prior to the holiday and on his next scheduled working day following the holiday unless excused by Management from work on these days.

Section 3. The hours for holidays not worked under Section 2, Item (a)(2) above, shall not be used in computing overtime payable for hours worked in excess of forty (40) in a work week.

Section 4. Postponed Holiday Guidelines.

(a) A holiday (other than personal) may be postponed if:

(1) A holiday falls on the employee's scheduled day of rest and the employee does not choose to be paid; he may choose to take a day (8 hours) off at another time;

(2) A day the employee is scheduled to work eight hours or more and does not choose to be paid the holiday allowance of eight hours; the employee may choose to receive one and one-half his regular rate for the first eight hours work plus a postponed holiday in lieu of the eight hours holiday allowance.

(b) The following criteria for postponing the holiday must be met:

(1) The holiday must be either a day on which the employee works eight hours or a scheduled day of rest, and

(2) An employee wishing to postpone the holiday must notify supervision during the week in which the holiday falls.

(c) For day-workers and those on the eight-hour shift, no more than six (6) postponed holidays may be banked at any one time. For shift-workers on the twelve-hour shift

schedule, no more than six (6) postponed holidays may be banked at any one time (a total of 48 hours for four (4) 12-hour postponed holidays).

(d) Guidelines for taking the postponed holiday are as follows:

(1) Requests for scheduled postponed holidays will be considered only if there is no overtime incurred. Normal relief operating priorities, and guidelines for postponed holidays apply on all other shifts. The postponed holiday will not be granted if it interferes with production or work efficiency.

(2) A postponed holiday must be scheduled after the observed holiday and before December 3 of the year in which the holiday falls. Requests will be considered on a "first come, first served" basis; however, they will not take precedence over scheduled full weeks or split vacations where proper notification has been given.

(3) If an employee is terminated for any reason or the time limit expires and the employee has not taken the postponed holiday, an allowance of eight hours pay at the regular rate will be made. This allowance will not be used to compute 6th or 7th day pay.

(4) Postponed holidays may be taken on any day except Sunday, days of vacation or other holidays; however, shift workers should note the following item (5).

(5) Pay for Holiday allowance: The postponed holiday is an 8-hour allowance. Shift workers taking a postponed holiday or a personal holiday on a Thursday when they would normally receive 1 ½ times pay, will not have the ½ times pay overtime payment deducted from their next pay check, i.e., they will not lose 4 hours of pay. (8 hours at ½ time = 4 hours).

(6) Employees who have scheduled a postponed holiday and then move to another work group, thereby causing scheduling conflicts, must choose other days.

(7) Postponed holidays cannot be rescheduled once they have started (notification of disability, death in family, jury duty, etc., must be received prior to the start of the day in the normal manner).

(8) Employees off on postponed holiday will not be considered for overtime on that day (7 a.m. to 7 a.m. for those on the 8-hour schedule; 6 a.m. to 6 a.m. for those on the 12-hour schedule) until all other qualified employees are considered.

ARTICLE XIII

Wages

Section 1. General rates of pay and/or rates of pay for new job classifications will be subject to discussion between the Union and the Plant at any mutually convenient time, and no general changes will be made in general rates of pay without prior consultation between the Plant and the Union.

Section 2. Either party to this Agreement may open negotiations in connection with general rates of pay and/or rates of pay for new job classifications on sixty (60) days' written notice to the other party.

Section 3. (a) Employees regularly scheduled to work on shifts shall be paid, in addition to their base rate, the shift differential applicable to the hours worked, as follows:

(1) For all hours worked on the afternoon eight (8) hour shift (3:00 P.M. to 11:00 P.M.), a shift differential of sixty-nine cents ($ .69) per hour shall be paid.

(2) For all hours worked on the midnight eight (8) hour shift (11:00 P.M. to 7:00 A.M.), a shift differential of one dollar and seven cents ($1.07) per hour shall be paid.

(3) For all hours worked on the eight (8) hour day shift (7:00 A.M. to 3:00 P.M.), no shift differential shall be paid.

(4) For all hours worked on the evening twelve (12) hour shift (6:00 PM to 6:00 AM), a shift differential of one dollar and seventeen cents ($1.17) per hour shall be paid.

(5) For all hours worked on the day twelve (12) hour shift (6:00 AM to 6:00 PM), no shift differential shall be paid.

(6) When an employee's regularly scheduled shift includes work in more than one of the periods specified in (1), (2) or (3) of this Section, his shift differential shall be determined by either method (i) or (ii) below, whichever yields the greater amount of pay:

(i) he shall receive the shift differential applicable to the hours worked, or

(ii) he shall receive for all hours worked, the higher shift differential, if any, applicable to the period in which he works four (4) or more hours.

(b). When a day worker works hours outside of his regular schedule, he shall be paid the shift differential applicable to such hours worked.

Section 4. (a) An employee called in by the Plant outside his regularly scheduled shift shall receive a "call-in" allowance of either: (a) three (3) hours' pay at his base rate plus applicable shift differential, if any, in addition to any other payment to which he may be entitled; or (b) a minimum of four (4) hours' pay at his base rate, whichever yields the greater amount of pay.

(b) Whenever a change of an employee's regularly scheduled working hours occurs without forty-eight (48) hours prior notice, a change of schedule allowance of one and one half (1 ½) times his regular rate of pay is to be paid for those hours worked on the first day of the new schedule. However, a change of schedule allowance will not be paid in the event of (1) a promotion or demotion (excluding temporary assignments); (2) relief for vacation of non-exempt salary personnel; (3) personal request; (4) return to work after a shutdown; (5) return to original schedule; (6) successful applicants for an advertised jobs; or (7) reassignment during vacation shutdown.

(c) An employee requested to work beyond the end of his regularly scheduled working hours, shall be given a minimum of thirty minutes' notice of such holdover prior to the end of the scheduled working hours; If the employee does not receive this notice, an allowance equal to one (1) hour's pay at regular rate shall be paid, in addition to overtime pay earned. Late relief and similar situations beyond Management's control are excluded and will not warrant payment of this allowance.

(d) An employee held over at least 15 minutes beyond his regular shift shall be provided the opportunity to continue to work at least two (2) hours. This does not apply if the holdover is caused by late relief.

Section 5. After a two (2) weeks' training period, a non-exempt salaried employee who has been selected for a job will receive the rate of that job, provided that in the opinion of the Plant, he is qualified to perform the job, except for permanent transfers to Relief Operator jobs. On those jobs, the employee will receive the full rate of the job when he is qualified to cover all the job(s) or after two (2) months' time on the job, whichever happens first.

Section 6. An employee who reports on time for regularly scheduled work and has not been previously notified to remain away from work shall be worked as scheduled, or in lieu thereof, shall be sent home immediately and receive an allowance of four (4) hours' pay at his base rate plus applicable shift differential, if any.

Section 7. In the case of death of a member of the immediate family of an employee, the Plant will grant as an excused absence such time as may be needed in connection therewith. A maximum of three (3) working days from the day of death to and including the day after the

funeral, but in no case extending beyond the day after the funeral, which are regularly scheduled days of work for the employee, shall be paid for at the employee's regular rate for the number of hours that would normally have been scheduled for that day, but such hours paid for shall not be considered as hours worked in computing overtime payable for hours worked in excess of forty (40) in any work week, nor shall such days be counted as days worked in determining whether an employee has worked a sixth or seventh day in the regularly scheduled work week [thirty-six (36) or forty-eight (48) hours for shift workers.].

For the purpose of this Section, a member of the employee's immediate family shall be limited to father, mother, husband, wife, brother, sister, son, daughter, or current mother-in-law or father-in-law. No more than three (3) days' pay shall be given should more than one (1) death occur in the family within any three (3) day period.

An employee who is excused from work to attend the funeral service in connection with the death of his grandparent, grandchild, son-in-law, daughter-in-law, or current brother-in-law or sister-in-law shall be paid his regular rate of pay for regularly scheduled hours of work up to a maximum of one (1) working day. Current brother-in-law and sister-in-law are defined as the spouse of the employee's brother or sister and the brother or sister of the employee's current spouse.

No leave or allowance shall be granted in the case where, because of distance or other cause, the employee does not attend the funeral of deceased. Notice of such deaths must be given to the employee's supervision as soon as is reasonably possible.

Section 8. Employees performing work considered "special assignment," defined as temporary work outside of the bargaining unit, including temporary upgrade to a supervisory position, will receive a ten percent (10%) increase above the top rate base pay for the period of time while in the special assignment. The duration of the special assignment must be at least a full day (8 hours) to be eligible for the 10% rate increase.

ARTICLE XIV

Miscellaneous Provisions

Section 1. The established Plant practice with respect to providing clothing for employees in effect on the day this Agreement is signed shall be continued, reserving, however, the right of the Union or the Plant to review and change these practices at any mutually convenient time.

Section 2. No detrimental notation shall be made on the employee interview record of an employee or other record that serves the same purpose unless the employee, and his Union representative if the employee so desires, are notified that such notation is to be made and an opportunity is given the employee to present any reason why such notation should not be made.

Section 3 -- Clothing Allowance. The Plant will provide a three hundred dollar ($300.00) annual cash allotment for clothing (the "clothing allowance") to employees who are regularly engaged in work that may cause abnormal wear to their clothing, permanently assigned to operations, maintenance, R&D, I.S., respiratory protection technician or stores classifications (the "eligible classifications") on the payday immediately following April 30th of each year of this Agreement. In the event an employee begins permanent employment in an eligible classification after April 30th, the clothing allowance will be prorated, i.e., one twelfth (1/12) of the clothing allotment will be paid for each month worked in the eligible classification after April 30th.

The Plant will provide a safety shoe allowance of up to $100.00 per employee, and up to $115.00 for welders, to obtain safety shoes twice per year. Alternatively, basic stock

shoes will be provided at no cost to employees. Employees ordering approved styles, exceeding the shoe allowance, will pay the difference in price between the shoe ordered and the basic shoe allowance.

Section 4 -- Meal Allowance. Day employees who work four (4) hours or more beyond their regularly scheduled working hours, and shift employees who work two (2) or more hours beyond their regularly scheduled working hours, shall receive a ten dollar ($10.00) meal allowance.

Section 5 - - Adverse Weather. In the event of an adverse weather condition, as determined by the plant, the following shall apply:

(a) Employees who have difficulty reporting for work at their scheduled start time are required to contact their supervisor and make every reasonable effort to report for work as close to their scheduled start time as possible. Employees will be paid only for hours worked, subject to Article XIII, Section 6. The Plant may grant an appropriate grace period for lateness due to adverse weather conditions.

(b) Non-essential employees who are unable to report for work due to an adverse weather condition are required to contact their supervisor and may request to use a personal holiday, split vacation, postponed holiday, if applicable, or a day off without pay. Requests will be granted at the Plant's discretion.

For purposes of this Adverse Weather Section, a non-essential employee shall be defined as an employee whose duties are not directly related to the Plant's operating

requirements on the day that an adverse weather condition exists, as determined by the Plant. The Plant will notify non-essential employees of their status via the Plant's 373 message system.

(c) If an employee requests, and is given, permission to take the day off without pay due to an adverse weather condition, the partial day or full day off can be worked on an alternative day during that work week at the Plant's discretion.

(d) The Plant may offer employees the option to leave prior to the end of their scheduled shift, if business needs permit. Employees will be paid only for hours worked unless an allowance is given at the discretion of the Plant Manager or his/her designee, subject to Article XIII, Section 6.

Section 6. Safety Committee: The Union shall designate a representative to serve as a member on the Plant PSM Committee.

Section 7. Each bargaining unit employee will be provided with a copy of this Agreement by the Plant.

Section 8. The Plant will replace (in kind) an employee's personal tools that are broken, lost, stolen and or need replacing for safety reasons. In certain circumstances, when deemed necessary by Management, an upgrade in the quality of a tool will be authorized.

ARTICLE XV

Bulletin Boards

Bulletin boards will be made available to the Union at mutually agreed upon locations. Notices shall be restricted to the following types:

1. Notices of Union recreational and social affairs;
2. Notices of Union elections, appointments, and results of elections;
3. Notices of Union meetings; and
4. Minutes of meetings of Union membership, and minutes of meetings with the Plant.
5. Any/all literature of a derogatory and/or inflammatory nature is prohibited.

ARTICLE XVI

No Strike And No Lockout

Section 1. (a) During the term of this Agreement, there shall be no strikes of any kind, including sympathy strikes, work stoppages, slowdowns, or interruptions of work of any kind, on the part of the Union and/or its members, for any reason, nor lockout on the part of the Plant for any reason. In exchange for the Union's agreement not to strike during the term of this Agreement, the Plant agrees that all disputes that arise under this Agreement, including interpretation thereof, shall be settled as specified in Article VI, entitled "Grievance Procedure."

(b) However, the parties agree that the no-strike/no lockout provisions of this Section shall not apply in the event of wage/rate negotiations as provided in Article XIII, Sections 1 and 2, above.

Section 2. The Union further agrees that in the event an employee or a group of employees instigates and/or takes part in any strike, as defined in Section 1, above, that the Union officers, stewards and representatives will not, in any way, participate in any such activity. The Union shall promptly disavow in writing any such action on the part of the employee or employees and the Union further agrees that it shall, through its officers, stewards and representatives make all reasonable efforts in order to terminate any such work interruption or interference. So long as the Union in good faith fulfills its responsibilities under this section, there shall be no liability on the part of the Union under this Agreement.

Section 3. Any individual, or group of individuals participating in such activity as has been described in the preceding sections, shall be subject to disciplinary action, up to and including discharge.

ARTICLE XVII

Scope of The Agreement

Section 1 -- Duration. This Agreement shall become effective at 12:01 a.m. June 1, 2000, and shall continue in full force and effect through 11:59 p.m. May 31, 2003. Thereafter, it shall renew itself automatically and continue in full force and effect from year to year, unless written notice of an election to terminate or modify this Agreement is given by one party to the other at least sixty (60) days prior to the expiration date.

Section 2 -- Separability. If any provision of this Agreement, is, at any time during the life of this Agreement, in conflict with any law, such provision shall become invalid and unenforceable, but such invalidity or unenforceability shall not impair or affect any other provision of this Agreement.

IN WITNESS WHEREOF the PLANT and the UNION have caused these presents to be executed by their duly authorized representatives on the 1st day of June, 2000.

E. I. DU PONT DE NEMOURS
AND COMPANY, INC.

By _____
Paul Cronshaw, Plant Manager

Witness:

Frank Ingraham

PAPER, ALLIED-INDUSTRIAL,
CHEMICAL AND ENERGY
WORKERS INTERNATIONAL UNION,
LOCAL 2-786

By _____
John Bradley, President

By _____
Raymond Biliski, Vice President

By _____
Mark Schilling
Chairman Contract Committee

PAPER, ALLIED-INDUSTRIAL,
CHEMICAL AND ENERGY WORKERS
INTERNATIONAL UNION

By _____
Arthur Wilson
International Representative

APPENDIX A

SUPPLEMENTAL AGREEMENTS

Supplemental Agreement Regarding the Transformation Process (dated 6/1/00)

Supplemental Agreement re Safety Issues (dated 6/1/00)

Supplemental Agreement - Union Business (dated 6/1/00)

Supplemental Agreement - Bump and Bid Procedures (dated 6/1/00)

Agreement on Line Break Procedure (dated 3/13/00)

Agreement on Vessel Entry Confined Space (dated 8/13/99)

Supplemental Agreement on Bargaining Unit Policies (dated _____)

Supplemental Agreement - Performance-Based Compensation for Edge Moor (dated 6/1/00)

723841-4

BENEFLEX

FLEXIBLE BENEFITS PLAN

Originally Adopted - January 1, 1992

E. I. du Pont de Nemours and Company

BENEFLEX
FLEXIBLE BENEFITS PLAN

I. PURPOSE

The purpose of this Plan is to provide eligible employees with the opportunity to choose among the types and levels of benefits available to them under this Plan. The portion of this Plan that consists of qualified benefits is intended to qualify as a "cafeteria plan" under Section 125 of the Internal Revenue Code. Any benefits that are not qualified benefits under Section 125 are not intended to be included within the "cafeteria plan" and are offered outside of the "cafeteria plan". This Plan is established for the exclusive benefit of employees, their covered dependents and their beneficiaries.

II. DEFINITIONS

1. The term "Code" means the Internal Revenue Code of 1986, as amended.

2. The term "Company" means E. I. du Pont de Nemours and Company, any wholly owned subsidiary or part thereof and any partnership or joint venture in which E. I. du Pont de Nemours and Company is joined which adopts this Plan with the approval of the Company, or such person or persons as the Company may designate.

3. The term "employee" means a "Full Service Employee" as such term is defined in the Company's Continuity of Service Rules.

4. The term "Plan" means the BeneFlex Flexible Benefits Plan as set forth herein, with any and all amendments hereto.

5. The term "Plan Year" means the calendar year January 1 through December 31.

III. ELIGIBILITY

Employees are eligible to participate in this Plan without regard to length of Company service.

VI. BENEFLEX DOLLARS

Each Plan Year, the Company will make available to each eligible employee an amount of BeneFlex Dollars which the employee may elect to apply toward the price of the benefit plans in which the employee elects to participate. An employee may elect to receive in cash that portion of the BeneFlex Dollars available to him and not applied to the price of the benefits elected.

No interest will be credited to or paid on BeneFlex Dollars made available to employees.

VII. EMPLOYEE CONTRIBUTIONS

Each employee may elect to authorize deductions from or to reduce his compensation or elect to do both during a Plan Year in such amount as is required to cover the price (after the application of BeneFlex Dollars) of any BeneFlex plan elected by the employee for the Plan Year in accordance with the provisions of Section VIII. Employee contributions shall be made by a reduction in the employee's taxable compensation to the extent the benefits elected are excluded from taxation under the Code and by after-tax deduction where the elected benefit is not exempt from taxation under the Code.

VIII. ELECTIONS

Prior to the commencement of each Plan Year, the Company shall provide each eligible employee with information that indicates the amount of BeneFlex Dollars available to each employee. Each employee shall elect the amounts of any salary reduction or deduction required to cover the cost of the benefits elected. The elections shall be effective on the first day of the Plan Year to which they apply except for those employees who are permitted to make elections after the commencement of a Plan Year, in which case the elections will be effective no earlier than the first day of the month following the election, unless otherwise specified in the benefit plans incorporated herein.

IX. FAILURE TO ELECT

An eligible employee failing to make an election on or before the specified due date shall be deemed to have made the elections specified as default elections.

X. IRREVOCABLE ELECTIONS

Elections made under the Plan (or deemed to have been made under Section IX) shall be irrevocable and binding for the balance of the Plan Year, provided, however, that such election may be revoked or changed prospectively, as to the balance of the Plan Year as specified in the benefit plans incorporated herein.

XI. NONDISCRIMINATION

This Plan is intended not to discriminate in favor of highly-compensated participants as to eligibility to participate, contributions, benefits or coverages, and to comply in this respect with the requirements of the Code. If, in the judgment of the Company, the operation of the Plan in any Plan Year results in such discrimination, the Company shall exclude from coverage under this Plan such highly compensated participants or reduce such contributions, benefits or coverages under this Plan, as shall be necessary to assure that, in the judgment of the Company, this Plan thereafter does not discriminate.

XII. ADMINISTRATION

The Company is the Plan Administrator. The Company shall have the authority to control and manage the operation and administration of this Plan and to designate one or more persons to carry out the responsibilities of the operation and administration of this Plan. The Company shall have the discretionary right to determine eligibility for benefits hereunder and to construe the terms and conditions of this Plan. The decision of the Company shall be final with respect to any questions arising as to the interpretation of this Plan.

XIII. MODIFICATION OR TERMINATION OF THE PLAN

The Company reserves the sole right to change or discontinue this Plan in its discretion provided, however, that any change in price or level of coverage shall be announced at the time of annual enrollment and shall not be changed during a Plan Year unless coverage provided by an independent, third-party provider is significantly curtailed or decreased during the Plan Year. Termination of this Plan or any benefit plan incorporated herein will not be effective until one year following the announcement of such change by the Company.

If any provision of this Plan is or in the future becomes contrary to any applicable law, rule, regulation or order issued by competent government authority, the Company reserves the sole right to amend or discontinue this Plan in its discretion without notice.

BENEFLEX

FLEXIBLE BENEFITS PLAN

Originally Adopted - January 1, 1992

Amended Effective - January 1, 1994

Restated - December 1, 1997

E. I. du Pont de Nemours and Company

BENEFLEX
FLEXIBLE BENEFITS PLAN

I. PURPOSE

The purpose of this Plan is to provide eligible employees with the opportunity to choose among the types and levels of benefits available to them under this Plan. The portion of this Plan that consists of qualified benefits is intended to qualify as a "cafeteria plan" under Section 125 of the Internal Revenue Code. Any benefits that are not qualified benefits under Section 125 are not intended to be included within the "cafeteria plan" and are offered outside of the "cafeteria plan". This Plan is established for the exclusive benefit of employees, their covered dependents and their beneficiaries.

II. DEFINITIONS

1. The term "Code" means the Internal Revenue Code of 1986, as amended.

2. The term "Company" means E. I. du Pont de Nemours and Company, any wholly owned subsidiary or part thereof and any partnership or joint venture in which E. I. du Pont de Nemours and Company is joined which adopts this Plan with the approval of the Company, or such person or persons as the Company may designate.

3. The term "employee" means a "Full Service Employee" as such term is defined in the Company's Continuity of Service Rules.

4. The term "Plan" means the BeneFlex Flexible Benefits Plan as set forth herein, with any and all amendments hereto.

5. The term "Plan Year" means the calendar year January 1 through December 31.

III. ELIGIBILITY

Employees are eligible to participate in this Plan without regard to length of Company service.

IV. PARTICIPATION

Benefits under this Plan shall not apply to any employee or the dependent(s) of any employee in a bargaining unit represented by a union for collective bargaining unless and until collective bargaining on the subject has taken place and any requisite obligations thereunder have been fulfilled.

A newly hired employee will be permitted to make elections after commencement of the current Plan Year in accordance with the enrollment procedures specified. Such new employee will have no coverage under this Plan until an election is made and such new employee

will have coverage under any benefit plan incorporated herein only to the extent provided in such plan.

Participation in this Plan shall terminate when the employee ceases to be an employee, except that nothing herein shall have any effect on the rights of any employee or beneficiary to continuation of group medical plan benefits, as may otherwise be required by Section 4980B of the Code.

V. BENEFITS

An employee may choose under this Plan to participate in the benefit plans described below. The benefits will not be provided by this Plan but by the respective plans which are hereby incorporated by reference into this Plan. The types and amounts of benefits available, the requirements for participation and the other terms and conditions of such plans are as set forth in the plans.

(1) BeneFlex Medical Care Plan

(2) BeneFlex Dental Care Plan

(3) BeneFlex Vision Care Plan

(4) BeneFlex Employee Life Insurance Plan

(5) BeneFlex Accidental Death Insurance Plan

(6) BeneFlex Dependent Life Insurance Plan

(7) BeneFlex Vacation Buying Plan

(8) BeneFlex Health Care Spending Account Plan

(9) BeneFlex Dependent Care Spending Account Plan

(10) BeneFlex Financial Planning Plan

VI. COMPANY CONTRIBUTIONS

Each Plan Year, the Company will determine the Company Contribution available for application towards the Benefit Cost of each BeneFlex Plan. The Company will also determine the Benefit Cost of each BeneFlex Plan. An employee may elect to use the designated portion of the Company Contribution towards other BeneFlex Plans.

VII. EMPLOYEE CONTRIBUTIONS

Each employee may elect to authorize deductions from or to reduce his compensation or elect to do both during a Plan Year in such amount as is required to cover the Benefit Cost after the application of the Company Contribution of any BeneFlex plan elected by the employee for the Plan Year in accordance with the provisions of Section VIII. Employee contributions shall be made by a reduction in the employee's taxable compensation to the extent the benefits

elected are excluded from taxation under the Code and by after-tax deduction where the elected benefit is not exempt from taxation under the Code.

VIII. ELECTIONS

Prior to the commencement of each Plan Year, the Company shall provide each eligible employee with information that indicates the amount of Company Contribution available to each employee. Each employee shall elect the amounts of any salary reduction or deduction required to cover the cost of the benefits elected. The elections shall be effective on the first day of the Plan Year to which they apply except for those employees who are permitted to make elections after the commencement of a Plan Year, in which case the elections will be effective in such manner as the Company may prescribe, but only in the event of, and consistent with, a change in the employee's family status or benefit coverage related to employment.

IX. FAILURE TO ELECT

An eligible employee failing to make an election on or before the specified due date shall be deemed to have made the elections specified as default elections.

X. IRREVOCABLE ELECTIONS

Elections made under the Plan (or deemed to have been made under Section IX) shall be irrevocable and binding for the balance of the Plan Year, provided, however, that such election may be revoked or changed prospectively, as to the balance of the Plan Year as specified in the benefit plans incorporated herein.

XI. NONDISCRIMINATION

This Plan is intended not to discriminate in favor of highly-compensated participants as to eligibility to participate, contributions, benefits or coverages, and to comply in this respect with the requirements of the Code. If, in the judgment of the Company, the operation of the Plan in any Plan Year results in such discrimination, the Company shall exclude from coverage under this Plan such highly compensated participants or reduce such contributions, benefits or coverages under this Plan, as shall be necessary to assure that, in the judgment of the Company, this Plan thereafter does not discriminate.

XII. ADMINISTRATION

The Company is the Plan Administrator. The Company shall have the authority to control and manage the operation and administration of this Plan and to designate one or more persons to carry out the responsibilities of the operation and administration of this Plan. The Company shall have the discretionary right to determine eligibility for benefits hereunder and to construe the terms and conditions of this Plan. The decision of the Company shall be final with respect to any questions arising as to the interpretation of this Plan.

XIII. MODIFICATION OR TERMINATION OF THE PLAN

The Company reserves the sole right to change or discontinue this Plan in its discretion provided, however, that any change in price or level of coverage shall be announced at the time of annual enrollment and shall not be changed during a Plan Year unless coverage provided by an independent, third-party provider is significantly curtailed or decreased during the Plan Year. Termination of this Plan or any benefit plan incorporated herein will not be effective until one year following the announcement of such change by the Company.

If any provision of this Plan is or in the future becomes contrary to any applicable law, rule, regulation or order issued by competent government authority, the Company reserves the sole right to amend or discontinue this Plan in its discretion without notice.

BENEFLEX

FLEXIBLE BENEFITS PLAN

Originally Adopted - January 1, 1992

Amended Effective - January 1, 2004

E. I. du Pont de Nemours and Company

BENEFLEX
FLEXIBLE BENEFITS PLAN

I. PURPOSE

The purpose of this Plan is to provide eligible employees with the opportunity to choose among the types and levels of benefits available to them under this Plan. The portion of this Plan that consists of qualified benefits is intended to qualify as a "cafeteria plan" under Section 125 of the Internal Revenue Code. Any benefits that are not qualified benefits under Section 125 are not intended to be included within the "cafeteria plan" and are offered outside of the "cafeteria plan". This Plan is established for the exclusive benefit of employees, their covered dependents and their beneficiaries.

II. DEFINITIONS

1. The term "Code" means the Internal Revenue Code of 1986, as amended.

2. The term "Company" means E. I. du Pont de Nemours and Company, any wholly owned subsidiary or part thereof and any partnership or joint venture in which E. I. du Pont de Nemours and Company is joined which adopts this Plan with the approval of the Company, or such person or persons as the Company may designate.

3. The term "employee" means a "Full Service Employee" as such term is defined in the Company's Continuity of Service Rules.

4. The term "Plan" means the BeneFlex Flexible Benefits Plan as set forth herein, with any and all amendments hereto.

5. The term "Plan Year" means the calendar year January 1 through December 31.

III. ELIGIBILITY

Employees are eligible to participate in this Plan without regard to length of Company service.

IV. PARTICIPATION

Benefits under this Plan shall not apply to any employee or the dependent(s) of any employee in a bargaining unit represented by a union for collective bargaining unless and until collective bargaining on the subject has taken place and any requisite obligations thereunder have been fulfilled.

A newly hired employee will be permitted to make elections after commencement of the current Plan Year in accordance with the enrollment procedures specified. Such new employee will have no coverage under this Plan until an election is made and such new

employee will have coverage under any benefit plan incorporated herein only to the extent provided in such plan.

Participation in this Plan shall terminate when the employee ceases to be an employee, except that nothing herein shall have any effect on the rights of any employee or beneficiary to continuation of group medical plan benefits, as may otherwise be required by Section 4980B of the Code.

V. BENEFITS

An employee may choose under this Plan to participate in the benefit plans described below. The benefits will not be provided by this Plan but by the respective plans which are hereby incorporated by reference into this Plan. The types and amounts of benefits available, the requirements for participation and the other terms and conditions of such plans are as set forth in the plans.

(1) BeneFlex Medical Care Plan

(2) BeneFlex Dental Care Plan

(3) BeneFlex Vision Care Plan

(4) BeneFlex Employee Life Insurance Plan

(5) BeneFlex Accidental Death Insurance Plan

(6) BeneFlex Dependent Life Insurance Plan

(7) BeneFlex Vacation Buying Plan

(8) BeneFlex Health Care Spending Account Plan

(9) BeneFlex Dependent Care Spending Account Plan

(10) BeneFlex Financial Planning Plan

(11) BeneFlex Legal Services Plan

VI. COMPANY CONTRIBUTIONS

Each Plan Year, the Company will determine the Company Contribution available for application towards the Benefit Cost of each BeneFlex Plan. The Company will also determine the Benefit Cost of each BeneFlex Plan. An employee may elect to use the designated portion of the Company Contribution towards other BeneFlex Plans.

VII. EMPLOYEE CONTRIBUTIONS

Each employee may elect to authorize deductions from or to reduce his compensation or elect to do both during a Plan Year in such amount as is required to cover the Benefit Cost after the application of the Company Contribution of any BeneFlex plan elected by the employee for the Plan Year in accordance with the provisions of Section VIII. Employee

contributions shall be made by a reduction in the employee's taxable compensation to the extent the benefits elected are excluded from taxation under the Code and by after-tax deduction where the elected benefit is not exempt from taxation under the Code.

VIII. ELECTIONS

Prior to the commencement of each Plan Year, the Company shall provide each eligible employee with information that indicates the amount of Company Contribution available to each employee. Each employee shall elect the amounts of any salary reduction or deduction required to cover the cost of the benefits elected. The elections shall be effective on the first day of the Plan Year to which they apply except for those employees who are permitted to make elections after the commencement of a Plan Year, in which case the elections will be effective in such manner as the Company may prescribe, but only in the event of, and consistent with, a change in the employee's family status or benefit coverage related to employment.

IX. FAILURE TO ELECT

An eligible employee failing to make an election on or before the specified due date shall be deemed to have made the elections specified as default elections.

X. IRREVOCABLE ELECTIONS

Elections made under the Plan (or deemed to have been made under Section IX) shall be irrevocable and binding for the balance of the Plan Year, provided, however, that such election may be revoked or changed prospectively, as to the balance of the Plan Year as specified in the benefit plans incorporated herein.

XI. NONDISCRIMINATION

This Plan is intended not to discriminate in favor of highly-compensated participants as to eligibility to participate, contributions, benefits or coverages, and to comply in this respect with the requirements of the Code. If, in the judgment of the Company, the operation of the Plan in any Plan Year results in such discrimination, the Company shall exclude from coverage under this Plan such highly compensated participants or reduce such contributions, benefits or coverages under this Plan, as shall be necessary to assure that, in the judgment of the Company, this Plan thereafter does not discriminate.

XII. ADMINISTRATION

The Company is the Plan Administrator. The Company shall have the authority to control and manage the operation and administration of this Plan and to designate one or more persons to carry out the responsibilities of the operation and administration of this Plan. The Company shall have the discretionary right to determine eligibility for benefits hereunder and to construe the terms and conditions of this Plan. The decision of the Company shall be final with respect to any questions arising as to the interpretation of this Plan.

XIII. MODIFICATION OR TERMINATION OF THE PLAN

The Company reserves the sole right to change or discontinue this Plan in its discretion provided, however, that any change in price or level of coverage shall be announced at the time of annual enrollment and shall not be changed during a Plan Year unless coverage provided by an independent, third-party provider is significantly curtailed or decreased during the Plan Year. Termination of this Plan or any benefit plan incorporated herein will not be effective until one year following the announcement of such change by the Company.

If any provision of this Plan is or in the future becomes contrary to any applicable law, rule, regulation or order issued by competent government authority, the Company reserves the sole right to amend or discontinue this Plan in its discretion without notice.

BENEFLEX

FLEXIBLE BENEFITS PLAN

Originally Adopted - January 1, 1992

Amended Effective - January 1, 2005

E. I. du Pont de Nemours and Company

BENEFLEX
FLEXIBLE BENEFITS PLAN

I. PURPOSE

The purpose of this Plan is to provide eligible employees with the opportunity to choose among the types and levels of benefits available to them under this Plan. The portion of this Plan that consists of qualified benefits is intended to qualify as a "cafeteria plan" under Section 125 of the Internal Revenue Code. Any benefits that are not qualified benefits under Section 125 are not intended to be included within the "cafeteria plan" and are offered outside of the "cafeteria plan". This Plan is established for the exclusive benefit of employees, their covered dependents and their beneficiaries.

II. DEFINITIONS

1. The term "Code" means the Internal Revenue Code of 1986, as amended.

2. The term "Company" means E. I. du Pont de Nemours and Company, any wholly owned subsidiary or part thereof and any partnership or joint venture in which E. I. du Pont de Nemours and Company is joined which adopts this Plan with the approval of the Company, or such person or persons as the Company may designate.

3. The term "employee" means a "Full Service Employee" as such term is defined in the Company's Continuity of Service Rules.

4. The term "Plan" means the BeneFlex Flexible Benefits Plan as set forth herein, with any and all amendments hereto.

5. The term "Plan Year" means the calendar year January 1 through December 31.

III. ELIGIBILITY

Employees are eligible to participate in this Plan without regard to length of Company service.

IV. PARTICIPATION

Benefits under this Plan shall not apply to any employee or the dependent(s) of any employee in a bargaining unit represented by a union for collective bargaining unless and until collective bargaining on the subject has taken place and any requisite obligations thereunder have been fulfilled.

A newly hired employee will be permitted to make elections after commencement of the current Plan Year in accordance with the enrollment procedures specified. Such new

employee will have coverage under any benefit plan incorporated herein only to the extent provided in such plan.

Participation in this Plan shall terminate when the employee ceases to be an employee, except that nothing herein shall have any effect on the rights of any employee or beneficiary to continuation of group medical plan benefits, as may otherwise be required by Section 4980B of the Code.

V. BENEFITS

An employee may choose under this Plan to participate in the benefit plans described below. The benefits will not be provided by this Plan but by the respective plans which are hereby incorporated by reference into this Plan. The types and amounts of benefits available, the requirements for participation and the other terms and conditions of such plans are as set forth in the plans.

(1) BeneFlex Medical Care Plan

(2) BeneFlex Dental Care Plan

(3) BeneFlex Vision Care Plan

(4) BeneFlex Employee Life Insurance Plan

(5) BeneFlex Accidental Death Insurance Plan

(6) BeneFlex Dependent Life Insurance Plan

(7) BeneFlex Vacation Buying Plan

(8) BeneFlex Health Care Spending Account Plan

(9) BeneFlex Dependent Care Spending Account Plan

(10) BeneFlex Financial Planning Plan

(11) BeneFlex Legal Services Plan

(12) BeneFlex Health Savings Account Plan

VI. COMPANY CONTRIBUTIONS

Each Plan Year, the Company will determine the Company Contribution available for application towards the Benefit Cost of each BeneFlex Plan. The Company will also determine the Benefit Cost of each BeneFlex Plan. An employee may elect to use the designated portion of the Company Contribution towards other BeneFlex Plans.

VII. EMPLOYEE CONTRIBUTIONS

Each employee may elect to authorize deductions from or to reduce his compensation

after the application of the Company Contribution of any BeneFlex plan elected by the employee for the Plan Year in accordance with the provisions of Section VIII. Employee contributions shall be made by a reduction in the employee's taxable compensation to the extent the benefits elected are excluded from taxation under the Code and by after-tax deduction where the elected benefit is not exempt from taxation under the Code.

VIII. ELECTIONS

Prior to the commencement of each Plan Year, the Company shall provide each eligible employee with information that indicates the amount of Company Contribution available to each employee. Each employee shall elect the amounts of any salary reduction or deduction required to cover the cost of the benefits elected. The elections shall be effective on the first day of the Plan Year to which they apply except for those employees who are permitted to make elections after the commencement of a Plan Year, in which case the elections will be effective in such manner as the Company may prescribe, but only in the event of, and consistent with, a change in the employee's family status or benefit coverage related to employment.

IX. FAILURE TO ELECT

An eligible employee failing to make an election on or before the specified due date shall be deemed to have made the elections specified as default elections.

X. IRREVOCABLE ELECTIONS

Elections made under the Plan (or deemed to have been made under Section IX) shall be irrevocable and binding for the balance of the Plan Year, provided, however, that such election may be revoked or changed prospectively, as to the balance of the Plan Year as specified in the benefit plans incorporated herein.

XI. NONDISCRIMINATION

This Plan is intended not to discriminate in favor of highly-compensated participants as to eligibility to participate, contributions, benefits or coverages, and to comply in this respect with the requirements of the Code. If, in the judgment of the Company, the operation of the Plan in any Plan Year results in such discrimination, the Company shall exclude from coverage under this Plan such highly compensated participants or reduce such contributions, benefits or coverages under this Plan, as shall be necessary to assure that, in the judgment of the Company, this Plan thereafter does not discriminate.

XII. ADMINISTRATION

The Company is the Plan Administrator. The Company shall have the authority to control and manage the operation and administration of this Plan and to designate one or more persons to carry out the responsibilities of the operation and administration of this Plan. The Company shall have the discretionary right to determine eligibility for benefits hereunder and to construe the terms and conditions of this Plan. The decision of the Company shall be final with respect to any questions arising as to the interpretation of this Plan.

XIII. MODIFICATION OR TERMINATION OF THE PLAN

The Company reserves the sole right to change or discontinue this Plan in its discretion provided, however, that any change in price or level of coverage shall be announced at the time of annual enrollment and shall not be changed during a Plan Year unless coverage provided by an independent, third-party provider is significantly curtailed or decreased during the Plan Year. Termination of this Plan or any benefit plan incorporated herein will not be effective until one year following the announcement of such change by the Company.

If any provision of this Plan is or in the future becomes contrary to any applicable law, rule, regulation or order issued by competent government authority, the Company reserves the sole right to amend or discontinue this Plan in its discretion without notice.

BENEFLEX
MEDICAL CARE PLAN

Originally Adopted - January 1, 1992

Last Amended - January 1, 2004

E. I. du Pont de Nemours and Company

BENEFLEX
MEDICAL CARE PLAN

I. PURPOSE

The purpose of this Plan is to provide medical benefits for employees and their eligible dependents by assisting in the payment of medically necessary expenses.

II. CONTRACT ADMINISTRATOR

Benefits under this Plan are administered by a Contract Administrator, as agent for the Company.

III. DEFINITIONS

1. The term "Company" means E. I. du Pont de Nemours and Company, any wholly owned subsidiary or part thereof and any partnership or joint venture in which E. I. du Pont de Nemours and Company is joined which adopts this Plan with the approval of the Company, or such person or persons as the Company may designate.

2. The term "employee" means a "Full Service Employee" as such term is defined in the Company's Continuity of Service Rules.

3. The term "dependent" means

   a. the lawful spouse of the employee who is (i) not working, (ii) not eligible for coverage under his or her employer's medical plan at less than a premium for individual coverage, as determined by the Company, or (iii) enrolled in his or her employer's medical plan.

   b. any child who is unmarried; claimed by the employee as a dependent for federal tax purposes (except full time students age 24); and

      (i) less than 19 years old, except full-time students under age 25; or

      (ii) mentally or physically incapable of earning a living, regardless of age, if the condition has been established prior to loss of coverage providing the employee submits proof of the child's incapacity and dependency to the Company at reasonable intervals upon request.

   c. the natural or legally adopted unmarried child under age 25 of an employee who, as the result of a qualified medical child support order, must be provided

with medical coverage by the employee. Such child(ren) must meet the full-time student requirement if age 19 or older.

d. a person who is not covered as an employee and as a dependent of an employee, or as a dependent of more than one employee.

4. The term "Plan" means the BeneFlex Medical Care Plan as set forth herein, with any and all amendments hereto.

5. The term "Plan Year" means the calendar year January 1 through December 31.

6. The term "reasonable and customary" means the actual fee charged by a doctor or facility providing a service for a service rendered or a supply furnished, but only to the extent the fee is reasonable, in the sole judgment of the Company, taking into account the following:

a. the usual fee which the doctor or facility most frequently charges the majority of patients for the particular service rendered or supply furnished; and

b. the prevailing range of fees charged in the same geographical area by similar health care providers for similar services, or

c. special circumstances or medical complications which require additional time, skill, experience or services to provide the necessary treatment.

7. The term "covered expenses" means expenses described in Section VII that are incurred by the employee or covered dependents after the date of the commencement of participation in this Plan.

8. The term "medically necessary" means a service or supply which is reasonable and necessary for the diagnosis or treatment of an illness or injury, in view of the customary practice in the geographical area, and is given at the appropriate level of care.

9. The term "custodial care" means treatment of persons who have reached the maximum level of recovery which can reasonably be expected, or care primarily for purposes of meeting a person's needs which could be provided by persons without professional skill or training.

10. The term "hospital" means

a. An institution which is primarily engaged in providing for compensation and on an inpatient basis, for the surgical and medical care, diagnosis and treatment of persons through medical, diagnostic and major surgical facilities. These facilities must be provided on the institution's premises, under the

supervision of a staff of physicians and with twenty-four-hour-a-day registered graduate nursing services; or

b. An institution which is accredited as a hospital by the Joint Commission on Accreditation of Hospitals, or which the Contract Administrator designates.

The term "hospital" shall not include any institution (or any part of an institution) which is used other than incidentally as a convalescent facility, nursing home, rest home, or a facility for the aged.

11. The term "experimental or investigational" means procedures or drugs which have not been broadly accepted among the relevant medical community as a standard part of medical practice.

12. The term "network" or "managed care network" means a contract arrangement with doctors, hospitals, pharmacies and other health care professionals.

13. The term "Mail Service" means a mail order pharmacy service designated by the Contract Administrator.

14. The term "generic drug" means a drug not protected by a trademark and usually descriptive of its chemical structure.

15. The term "Employee Assistance Program" means the organization designated to authorize treatment for mental health and chemical dependency.

IV. ELIGIBILITY

Employees are eligible to participate in this Plan without regard to length of Company service. Dependents shall become eligible for benefits under this Plan only when such dependent is enrolled as a dependent by the employee.

V. PARTICIPATION

Participation in this Plan shall become effective only if the employee elects to participate in this Plan in connection with the BeneFlex Flexible Benefits Plan. An employee who fails to make an election for the BeneFlex Flexible Benefits Plan for the succeeding Plan Year will be deemed to have made the election specified as the default election. An employee who declines coverage will not have any benefits except as a dependent or except as approved by the Employee Assistance Program for the treatment of mental health or chemical dependency.

VI. COVERAGE

A participating employee may elect coverage for the employee only, the employee and one family member (spouse or dependent child) or employee and family (spouse and dependent children).

VII. MEDICAL CARE BENEFITS

Subject to the provisions of Section VIII, covered expenses will be paid as follows:

1. Hospitalization Expenses - Inpatient

   a. Unlimited Days of confinement

      (i) semiprivate room and board

      (ii) use of operating and recovery rooms and related equipment

      (iii) use of intensive care unit

      (iv) general nursing care

      (v) drugs and medicines

      (vi) laboratory tests

      (vii) dressings, ordinary splints and casts

      (viii) X-ray examinations, electrocardiograms and electroencephalograms

      (ix) X-ray therapy, radiation therapy, chemotherapy, and electroshock therapy

      (x) oxygen therapy, physical therapy, and hydrotherapy

      (xi) anesthetic materials

      (xii) administration of blood and blood plasma (but not the blood or plasma itself)

      (xiii) routine nursery care for newborns

      (xiv) blood typing and crossmatching

      (xv) use of cystoscopic room

      (xvi) special diets

   b. Unlimited days of confinement for treatment of mental or nervous disorders.

2. Hospitalization Expenses - Outpatient

   a. reasonable and customary hospital charges will be paid as follows:

(i) Hospital facility charges for outpatient surgery but only charges incurred on the day the surgery is performed

(ii) Diagnostic X-ray and laboratory services except those done for routine physical examinations

(iii) X-ray therapy, radiation therapy, chemotherapy and electroshock therapy.

3. Surgical Benefits

a. In-patient surgery

(i) Surgeon's reasonable and customary fee for surgery and normal preoperative and post operative care

(ii) Assistant surgeon's charge when medically necessary

(iii) Anesthesiologist charges when anesthesia is not administered by the surgeon,

b. Second surgical opinions regarding elective surgery rendered out-of-network by a Board-certified or Board-qualified surgeon capable of performing the surgery who is not associated with or in partnership with the first surgeon, and a third opinion in the event the first and second opinions are not in agreement.

c. Out-patient surgery at surgeon's reasonable and customary fees.

d. Emergency Room surgery by a surgeon not part of the emergency room team at the reasonable and customary fees

e. Multiple surgical procedures performed during the same operative setting will have the reasonable and customary fee for each additional procedure reduced on a schedule established by the Company.

f. Dental Work and Oral Surgery

(i) Accidental Injury

Charges for repair of natural teeth or other body tissues required as a result of accidental injury, including anesthesiologist and hospital charges.

(ii) Oral Surgery

(a) Inpatient hospitalization charges must be certified for medical necessity by a physician other than a dentist.

(b) Outpatient hospitalization charges that an oral surgeon certifies for medical necessity.

(iii) Integration with BeneFlex Dental Care Plan

For treatment covered under this Plan and the BeneFlex Dental Care Plan, the total benefit paid will be equal to the benefit provided by the plan providing the higher payment.

4. Other Medical Benefits

a. Pre-admission testing for hospitalization that is accepted by the hospital at which surgery is later performed, done before the date of hospital admission but not out-of-date, and medically useful at the time of confinement

b. Professional fees for out-patient diagnostic X-ray and laboratory test, including certain allergy tests

c. Charges for outpatient kidney dialysis

d. Charges for chemotherapy or radiation

e. Professional fees for X-ray therapy, radiation therapy, chemotherapy and electroshock therapy performed on an outpatient basis

f. Doctor's visits other than for outpatient psychiatric treatment, including emergency care in a doctor's office or qualified free-standing clinic

g. X-ray therapy, radiation therapy, chemotherapy, electroshock therapy when patient is hospitalized

h. Medically necessary service of a private duty registered nurse or a licensed practical nurse for skilled care, excluding services by a nurse who is a member of the family or the spouse's family or resides in the patient's home and any custodial services

i. Physical therapy including speech and occupational therapy prescribed by a physician to restore a skill or ability lost through illness or injury

j. Developmental therapy for dependent children necessary and reasonable for the treatment of conditions resulting from brain dysfunction or other congenital abnormality that is prescribed by a physician and preauthorized by the contract administrator.

k. Durable medical and surgical equipment necessary and reasonable for the treatment of an illness or injury or required to replace a body function lost or

impaired due to a disease, injury or congenital abnormality, such as wheelchairs and braces

l. Artificial limbs and eyes that are medically necessary

m. Consultations by an attending physician with other physicians, where special skill or knowledge is required for diagnosis or treatment but not for consultations when the patient is not an inpatient, for radiological consultations when the consultation is done solely to meet hospital regulations, when a patient is being referred to another doctor for treatment or for more than one consultation by any one physician during any one hospital confinement

n. Professional ambulance service to the nearest facility that can provide the needed services when medically necessary, but not transport service

o. Anesthetics and oxygen

p. Blood and blood plasma if not covered by other programs such as blood banks

q. Drugs and legend vitamins obtainable only by written prescription of a physician when purchased outside of a hospital confinement. This includes oral contraceptives.

r. Treatment for problems associated with the temporomandibular joint (TMJ) and associated muscles for chewing, subject to review for medical necessity. These services include, but are not limited to, splints, physical therapy, trigger point injections and surgical procedures.

5. Preventive Care Benefits

Preventive care as set forth in the Summary Plan Description, at 100% Physicians' fees in connection therewith subject to copayment and deductibles.

6. Infertility treatment and in vitro fertilization

All treatments must be preauthorized with the Contract Administrator and are subject to the per family lifetime infertility and in vitro fertilization maximums of $15,000 for medical services and/or $10,000 for prescription drugs. Services under this benefit will be paid in accordance with the appropriate provisions of this Plan (i.e., office visits, testing, surgery, etc.) and include:

a. Surgical reconstruction procedures and all associated charges.

b. All charges included as any part of an in vitro fertilization program.

c. All charges included as any part of hormonal dysfunction treatment or infertility treatment.

d. All treatment and procedures must be performed on a covered female employee or dependent wife, the sperm must be provided by her husband unless the husband is sterile not due to voluntary sterilization, and she must carry the embryo.

e. The treatment and procedures must be performed at medical facilities that conform to the American College of Obstetrics and Gynecology guidelines for in vitro fertilization clinics or to the American Fertility Society's standards for in vitro fertilization procedures.

f. The physician determines, based on medical evidence, that all other viable covered hormonal dysfunction treatment, infertility treatment or procedures (except tubal reconstruction) have already been utilized or are not appropriate.

g. The Contract Administrator reserves the right to request an examination by another physician.

7. Alternate Care facilities

a. Extended Care Facility - unlimited days within 14 days of discharge from a hospital stay of at least 3 days provided that treatment must be for continued recuperation of the illness or injury for which the patient was hospitalized.

b. Home Health Care - unlimited days provided that treatment begins within 7 days after discharge as an inpatient from a hospital or extended care facility and be treatment for the same or related condition for which the patient was hospitalized.

c. Hospice - unlimited days in a hospice program.

d. Christian Science Facility - unlimited days for room and board and nursing care in lieu of inpatient hospital care.

e. Birthing Center expenses at a qualified free standing Birth Clinic for the 24-hour period which includes labor, delivery and postpartum phases, related x-ray and laboratory services and well baby care while the infant is still in the facility.

f. Ambulatory Surgical Center expenses incurred in a qualified facility on the day of the surgery. Surgeons fee is paid in accordance with Section VII.3.

VIII. AMOUNT OF BENEFIT

1. Where a managed care network is available, an employee may elect medical coverage in the following amounts:

Options	Type of Coverage	Office Visit Copay/Deductible	Covered Preventive Tests and Immunizations	Other Covered Services	Out-of-Pocket Limit
Option P: Point-of-Service and Option R: Preferred Provider Organization	In-network	$20/office visit	100%*	90%	$1,600 individual $3,200 family
	Out-of-network	$500 individual $1,000 family	100% R&C*	70% R&C after deductible	$4,000 individual $8,000 family
Option C: Catastrophic	No network providers available	$2,000 individual $4,000 family	100% R&C*	60% R&C after deductible	$5,000 individual $10,000 family
Option U: Consumer Choice	In-network	See Below	100%	90%	See Below
	Out-of-network		100% R&C*	70% R&C after deductible	

*Physicians' fees in conjunction with covered preventive tests and immunizations are subject to copayments and deductibles (applicable to options P, R and C)

Option U: Consumer Choice Deductible & Out-of-Pocket Limit Amounts:

Coverage Level	Deductible			Out-of-Pocket Limit	
	Health Fund	Employee	Total	In-Network	Out-of-network
Single	$500*	$1,000	$1,500	$3,500	$5,000
Two Person	$750*	$1,500	$2,250	$5,250	$7,500
Family	$1,000*	$2,000	$3,000	$7,000	$10,000

*2003 Consumer Choice Health Fund and employees' share of the deductible amounts by coverage level are: $750 single; $1,125 two person; $1,500 family. The Health Fund amounts shown reflect the annual Company benefit contribution. Unused amounts may be carried over from year to year up to the total deductible amount. Health Fund amounts carried over from prior years reduce the employee's share of the deductible.

2. Where the only managed care network available is Option U an employee may elect medical coverage in the following amounts;

Options	Type of Coverage	Office Visit Copay/Deductible	Covered Preventive Tests and Immunizations	Other Covered Services	Out-of-Pocket Limit
Option B: Indemnity	No network providers available	$500 individual $1,000 family	100% R&C*	80% R&C after deductible	$1,600 individual $3,200 family
Option C: Catastrophic	No network providers available	$2,000 individual $4,000 family	100% R&C*	60% R&C after deductible	$5,000 individual $10,000 family
Option U: Consumer Choice	In-network	See Below	100%	90%	See Below
	Out-of-network		100% R&C*	70% R&C after deductible	

*Physicians' fees in conjunction with covered preventive tests and immunizations are subject to copayments and deductibles (applicable to options P, R and C)

Option U: Consumer Choice Deductible & Out-of-Pocket Limit Amounts:

Coverage Level	Deductible			Out-of-Pocket Limit	
	Health Fund	Employee	Total	In-Network	Out-of-network
Single	$500*	$1,000	$1,500	$3,500	$5,000
Two Person	$750*	$1,500	$2,250	$5,250	$7,500
Family	$1,000*	$2,000	$3,000	$7,000	$10,000

*2003 Consumer Choice Health Fund and employees' share of the deductible amounts by coverage level are: $750 single; $1,125 two person; $1,500 family. The Health Fund amounts shown reflect the annual Company benefit contribution. Unused amounts may be carried over from year to year up to the total deductible amount. Health Fund amounts carried over from prior years reduce the employee's share of the deductible.

3. The amount of the pharmacy benefit is dependent upon the Option elected as described in the following chart:

	Options P, R, U and B		Option C
	In-network Pharmacy	Out-of-network Pharmacy	No network pharmacies available
Retail	Up to a 30-day supply:	Up to a 30-day supply:	Direct pay and submit to Aetna for reimbursement, subject to deductible and coinsurance
Brand	30%*, $20 minimum**	Reimbursement is negotiated price less coinsurance or copayment	
Generic	30%*, $7 minimum**		
Mail	Up to a 90-day supply:	Not applicable	Not applicable
Brand	$45 copayment**		
Generic	$16 copayment**		
Out-of-Pocket Limit	$1,500 per individual		$1,500 per individual

*Percentage is based on discounted rate

**If the discounted price is less than the minimum copayment, the participant pays the actual discounted price.

4. The amount of the Mental Health and Chemical Dependency Benefit is dependent on the approval of the Employee Assistance Program

Mental Health and Chemical Dependency Benefit Amounts

Coverage	Options P, R, and U*	Option B	Option C	Options N* and Z*
In-Network Benefits When Using The Employee Assistance Program				
Outpatient Care	90%	90%	90%	90%
InPatient Care**	90% for days 1-30 100% thereafter for the year	90% for days 1-30 100% thereafter for the year	90% for days 1-30 100% thereafter for the year	No benefit
Out-of-Network Benefits When care is not coordinated through the DuPont Employee Assistance Program. All out-of-network benefits require the use of licensed MH/CD providers and facilities. Precertification applies.				
Outpatient Care***	70% R&C	60% R&C	60% R&C	No benefit
InPatient Care**	70% for days 1-30 100% thereafter for the year	60% for days 1-30 100% thereafter for the year	60% for days 1-30 100% thereafter for the year	

*The health fund and deductible portion of Option U does not apply to mental health and/or chemical dependency expenses. Option N coverage applies to active employees only, for services authorized by a DuPont EAP Counselor. No dependent coverage is provided.

**Inpatient days apply to any/all inpatient stays during the calendar year. The Plan may authorize an exchange of 3 days of intensive outpatient treatment for 1 inpatient day, and 2 days of partial outpatient treatment for 1 inpatient day apply. Benefits shown are per individual per year.

***There are no out-of-network benefits available for outpatient chemical dependency treatment.

5. Employees located at sites where a network is available may choose to enroll in network coverage, whether or not their residence zip code falls within the network area.

6. The deductibles and coverage limitations in Section VIII.1. and VIII.2 above apply to all benefits provided, except for Preventive Care Benefits and for Outpatient Mental Health Care and Rehabilitation for Chemical Dependency approved by the Employee Assistance Program.

7. For family deductible and annual out-of-pocket limit, one person must meet the individual and then the combined expenses of all other family members' expenses apply toward the family deductible and annual out-of-pocket limit. For Option U, the combined expenses of all family members apply toward meeting the deductible and annual out-of-pocket limit associated with the selected coverage level.

8. The maximum amount payable for all covered medical expenses incurred on account of any one person in any one Plan Year shall not exceed $1.5 million, except as authorized by the Company, and payment for infertility treatment and in vitro fertilization procedures shall not exceed a lifetime maximum of $15,000 for medical services and/or $10,000 for prescription drugs per family.

9. The individual and family out-of-pocket limit applies to the participant's share of covered charges. Infertility treatment and in vitro fertilization treatment (including hormonal dysfunction), copayments, charges above reasonable and customary, prescription copayments or coinsurance, and non-eligible charges are not included in the medical out-of-pocket calendar-year limit. A separate out-of-pocket calendar-year limit applies to prescription copayments and coinsurance.

10. Alternative Coverage may be elected, including but not limited to Blue Cross/Blue Shield or a health maintenance organization (HMO) if it is available at the employee's location. In the event of such election, the Company contribution toward the coverage will be adjusted to reflect the cost-sharing percentage established by the Company.

IX. PRE-CERTIFICATION

Pre-certification is advance verification that a hospital inpatient admission is medically necessary. Any emergency admission for inpatient hospitalization should be certified within forty-eight (48) hours or on the first business day after the admission or at least sixty (60) days before the expected delivery date in maternity cases.

X. EXCLUSIONS

Charges for the following services and supplies shall in no event be considered covered medical expenses:

1. Charges due to an occupational illness or injury.
2. Charges relating to past or present military service.
3. Charges resulting from any occupation or work outside the Company for compensation or profit.
4. Charges for treatment to a person before that person becomes eligible for coverage under this Plan.
5. Charges covered under any national or local law (except charges relating to a government group insurance plan for that government's own civilian employees).
6. Charges which would not have been made had the patient not been covered under this Plan, or charges which the participant or his or her eligible dependents are not legally obligated to pay.
7. Charges which are associated with injuries suffered due to the act or omission of a third party.
8. Charges for services or supplies not recommended by a physician.
9. Charges for services or supplies not medically necessary for the diagnosis and treatment of the illness or injury, except for preventive procedures described herein.
10. Charges for services or supplies specifically to maintain a level of well-being.
11. Charges in excess of carrier-negotiated fees or reasonable and customary charges.
12. Charges for services and associated expenses considered experimental or investigative.
13. Charges for services not widely accepted by the U.S. medical community as safe and effective treatment for illness or injury (e.g., most applications of acupuncture).
14. Charges for custodial care, regardless of who recommends or provides the care.
15. Charges for cosmetic surgery unless it is necessary for prompt repair of a nonoccupational injury or is related to a visible congenital defect of an eligible newborn child.

16. Charges related to an act of war, declared or undeclared, if the injury or illness occurs after the person is covered under this Plan.

17. Charges for nonmedical equipment or items intended for the comfort/convenience of the patient such as exercise cycles, hot tubs, stairway elevators, humidifiers.

18. Charges incurred for any medical observation or diagnostic study when no disease or injury is revealed unless:

    a. The covered person had definite symptoms of illness or injury other than hypochondria

    b. The observation or studies were not part of a routine physical examination

    c. The request for benefit is in order in all other respects

19. Charges for personal services such as phone, TV, guest meals.

20. Charges for items available for purchase over the counter, regardless of who recommends the purchase.

21. Charges for travel other than what may be authorized under "Centers of Excellence" Transplant Program.

22. Charges for any services performed by a resident physician or intern of a hospital when billed directly. Their services are included in the hospital's bill.

23. Charges for hospitalization primarily for diagnostic studies, X-ray or laboratory examinations, electrocardiograms, electroencephalograms or physical therapy except when medically necessary.

24. Charges for inpatient hospitalization for dental care, unless confinement is due to accidental bodily injury, or when a physician other than a dentist certifies that the hospital setting is necessary to safeguard the life or health of a patient.

25. Charges for eyeglasses, contact lenses, and hearing aids (or examinations for the prescription or fitting of them) except for one pair of eyeglasses or contact lenses following cataract surgery.

26. Charges for orthopedic appliances (including orthotics) when they are primarily used as supportive devices for the feet.

27. Charges for care rendered to a dependent child after his or her marriage.

28. Charges not reported for more than two years.

29. Charges for services or supplies not specifically defined as covered expenses.

30. Charges for in-hospital physician visits for any day the physician does not visit the covered patient.

31. Charges related to dental treatment except charges for repair of natural teeth or other body tissues required as a result of accidental injury.

32. Charges for TMJ diagnosis, and for TMJ treatment involving the teeth, such as crowns, inlays/onlays, bridges, full and partial dentures, or orthodontics.

33. Second or third opinions concerning procedures not covered by this Plan or required by a hospital.

34. Charges covered by any other plan of the company.

35. Charges for chiropractic care other than X-rays, manipulations of the spine, heat and ultrasound treatments.

36. Charges for physical examinations outside the scope of the Basic Preventive Services Schedule.

37. Charges for communication equipment such as augmentive speech devices.

38. Charges for immunizations required for personal international travel.

39. Charges for missed appointments or copying medical records.

XI. MAINTENANCE OF BENEFITS

1. If the total of benefits payable with respect to any individual under this Plan and any other medical plan would exceed such individual's allowable reimbursement, and when this Plan is secondary to such other medical plan, benefits otherwise payable hereunder shall be reduced so that the total of benefits payable under this Plan and any other medical plan does not exceed allowable reimbursement. The determination of which plan is secondary shall be made in accordance with the following rules:

   a. A plan which does not have a coordination of benefits clause is presumed to be the primary program and pay first.

b. If one plan covers the individual as an employee, pensioner or survivor and the other covers him as a dependent, the plan which covers the individual as a dependent is secondary.

c. If one plan covers the individual as an employee and the other covers the individual as a pensioner or survivor, the plan which covers the individual as a pensioner or survivor is secondary.

d. If two plans cover the individual as a dependent child, the parent whose birthday falls first in the year is primary for dependent children over the plan which covers the parent whose birthday falls later in the year.

e. When rules (a) - (d) do not establish which plan is secondary, then the plan which has covered the individual for the shorter period of time is secondary.

2. The term "other medical plan" means any plan or plans providing benefits or services for or by reason of medical care or treatment, which benefits or services are provided by group insurance, government programs, or any other arrangement of coverage for individuals in a group, whether insured or uninsured, excluding the Company's plans providing hospital, surgical or medical services or benefits. When a plan provides benefits in the form of services, the reasonable cash value of each service rendered shall be deemed to be both a benefit paid and an allowable expense.

3. For the purpose of implementing this provision or any similar provision of any other medical plan the Company may, without consent of or notice to any person, release to or obtain from the administrator of any other medical plan such information regarding benefit coverage as it deems necessary for such purpose. Any person claiming benefits under this Plan shall provide the Company with such information as may be necessary to implement this provision.

4. Whenever payments which should have been made under this Plan have been made under any other medical plan, the Contract Administrator shall have the right, in its sole discretion, to pay to any organizations making such other payments in such amount as it determines to be necessary to satisfy the intent of this provision. The amount so paid shall be deemed to be benefits paid under this Plan. Similarly, whenever the Contract Administrator has made payments under this Plan which should have been made under any other medical plan, or payments in excess of this amount necessary to satisfy the intent of this section, the Contract Administrator shall have the right to recover such payments from any individual to or with respect to whom such payments were made, or from any organization making payments under any other medical plan.

XII. PRO RATA COVERAGE FOR PART-TIME EMPLOYEES

For any employee who is working less than a full schedule per week, the Company's contribution to benefits payable under this Plan will be reduced based on the reduction in the employee's work schedule compared to a full schedule. The Company may agree to waive the reduction of its contribution to benefits in cases where a business unit initiates the reduced schedule to accommodate work curtailment or deferral for a period of definite duration.

XIII. DISCONTINUANCE OF COVERAGE

An employee's coverage under this Plan with respect to the employee and any eligible dependents shall terminate on the last day of the calendar month in which employment terminates, and a dependent's coverage under this Plan will terminate on the last day of the calendar month in which such individual ceases to be a dependent.

XIV. CONTINUATION OF COVERAGE

Continuation of coverage under this Plan will be provided to Qualified Beneficiaries according to the following terms:

1. If coverage under this Plan ceases with respect to any employee or his dependent, continuation of coverage under this Plan is extended to those employees and dependents (herein designated "Qualified Beneficiaries") to whom the following qualifying event(s) have occurred resulting in a loss of coverage under this Plan:
   a. termination of Company employment for any reason except gross misconduct;
   b. divorce or legal separation (when the latter causes loss of coverage);
   c. death of an employee; or
   d. loss of eligible dependence status.

2. Subject to paragraph 3 below, qualified beneficiaries will be entitled to continuation of coverage beginning upon the first occurrence of a qualifying event and terminating after:
   a. 18 months in the case of termination of work;
   b. 36 months in the case of divorce, separation, or death of an employee or loss of eligible dependence status.

3. Conditions governing the loss of continuation of coverage.
   a. coverage will end if the applicable premium is not paid by or on behalf of the qualified beneficiary;

b. coverage will end if the qualified beneficiary becomes covered under any other group health plan as an employee, or otherwise;

c. coverage will end if the qualified beneficiary becomes eligible for Medicare;

d. coverage will end if this Plan is terminated.

4. Election to Continue Coverage

a. Qualified beneficiaries may elect to continue coverage by notifying the Company within 60 days of either the qualifying event or the day at which notice of rights is conveyed to such qualified beneficiaries, whichever is later; provided that in the case of an event in 1.(b) or (d) above, the Company has been notified by the qualified beneficiary within 60 days of the event.

b. Any election of coverage available under this Plan by the employee on behalf of a spouse or dependents shall be considered effective as to such individuals unless:

(i) a separate election is made by the affected dependents;

(ii) an election by a spouse (or ex-spouse) is made on behalf of an affected dependent.

5. Premiums Paid by Qualified Beneficiaries

a. Where continuation coverage is elected by qualified beneficiaries, a premium in the amount of 102% of the applicable costs shall be paid monthly.

b. Initial premiums for such continuation of coverage must be paid within 45 days of election.

c. Premium payments must be made within 30 days of the due date or coverage will end.

XV. RIGHT TO REIMBURSEMENT AND SUBROGATION

If a Plan participant is injured or becomes ill and another party is at fault or potentially responsible, this Plan will pay medical benefits subject to the following:

1. Immediately upon paying or providing any benefit under this Plan to a Plan participant, the Plan shall be subrogated to all rights of recovery the Plan participant has against any party potentially responsible for making any payment to the Plan participant as a result of an injury or illness, to the full extent of benefits provided or to be provided.

2. If a Plan participant receives any payment from any potentially responsible party, whether by settlement, judgment or otherwise, the Plan has the right to recover from, and be reimbursed by, the Plan participant for all amounts the Plan has paid and will

pay as a result of the injury or illness, up to and including the full amount the Plan participant receives.

3. The Plan, by providing benefits hereunder, is hereby granted a lien on the proceeds of any settlement, judgment or other payment intended for, payable to or received by the Plan participant, and the Plan participant hereby consents to said lien and agrees to take whatever steps are necessary to help the Plan secure said lien.

4. By accepting benefits hereunder, the Plan participant hereby grants a lien and assigns to the Plan an amount equal to the benefits paid against any recovery made by or on behalf of the Plan participants. This assignment is binding on any attorney who represents the Plan participant and any insurance company or other financially responsible party against whom a Plan participant may have a claim provided that the attorney, insurance carriers or others have been notified by the Plan or its representatives. No Participants may assign rights to recover medical expenses without the prior written consent of the Plan.

5. The Plan participant shall do nothing to prejudice the subrogation and reimbursement rights of the Plan and, shall, when requested, cooperate fully with the efforts of the Plan and representatives of the Plan to recover the benefits paid, including completing such forms and in giving such information surrounding any accident that the Plan or its representatives deem necessary to investigate a claim.

6. A Plan participant receiving benefits under this Plan acknowledges that the subrogation and reimbursement rights of the Plan are a first priority claim against all potentially responsible parties and are to be paid before any other claim for the Plan participant's damages. The Plan shall be entitled to full reimbursement first from any payments by a potentially responsible party, even if such payment to the Plan will result in a recovery to the Plan participant that is insufficient to make the Plan participant whole or to compensate the Plan participant in part or in whole for the damages sustained.

7. The Plan is not required to participate in or pay attorney fees to the attorney hired by the Plan participant to pursue the Plan participant's damage claim. No Plan participant shall incur any expenses on behalf of the Plan in pursuit of the Plan's rights hereunder, specifically no court costs nor attorney fees may be deducted from the Plan's recovery without the prior express written consent of the Plan.

8. The terms of this subrogation and reimbursement provision shall apply and the Plan is entitled to full recovery regardless of whether any liability for payment is admitted by any potentially responsible party and regardless of whether the settlement or judgment received by the Plan participant identifies the medical benefits the Plan provided. The Plan is entitled to recover from any and all settlement or judgments, even those designated as pain and suffering or non-economic damages only.

9. For purposes of this provision, the following terms shall have the meaning indicated:

"Plan participant" means any person on whose behalf the Plan pays or provides any benefit, including but not limited to the minor child or dependent of a participating employee or any person entitled to receive any benefits from the Plan.

"Responsible Party" means any party possibly or potentially responsible for making any payment to a Plan participant due to a Plan participant's injuries or illness or any insurance coverage, including but not limited to uninsured motorist coverage, underinsured motorist coverage, personal umbrella coverage, med-pay coverage, workers compensation coverage, no-fault automobile insurance coverage or any first party insurance coverage.

XVI. PRICE OF COVERAGE

The price of coverage under this Plan during each Plan Year will be determined by the Company. The price of coverage will be deducted from the participating employee's compensation.

XVII. APPLICATION FOR BENEFITS

Application for benefits under this Plan must be filed with the Contract Administrator on the forms provided. Filing any claim for benefits under this Plan will constitute an authorization to any physician, hospital, dentist, pharmacy, insurance company, employer or organization to release any information regarding the claim for the purpose of validating and determining benefits payable or for audit or statistical purposes.

XVIII. IRREVOCABLE ELECTIONS

Elections made under this Plan (or deemed to have been made) shall be irrevocable and binding for the balance of the Plan Year, provided, however, that such elections may be revoked or changed in such manner as the Company may prescribe, but only in the event of, and consistent with, a change in the employee's family status or benefit coverage related to employment. Coverage for a dependent may be added retroactively, in which case the price of coverage will be by after-tax deduction.

XIX. ADMINISTRATION

The Company is the Plan Administrator. The Company shall have the authority to control and manage the operation and administration of this Plan and to designate one or more persons to carry out the responsibilities of the operation and administration of this Plan. The

Company shall have the discretionary right to determine eligibility for benefits hereunder and to construe the terms and conditions of this Plan. The decision of the Company shall be final with respect to any questions arising as to the interpretation of this Plan.

XX. MODIFICATION OR TERMINATION OF THE PLAN

The Company reserves the sole right to change or discontinue this Plan in its discretion provided, however, that any change in price or level of coverage shall be announced at the time of annual enrollment and shall not be changed during a Plan Year unless coverage provided by an independent, third-party provider is significantly curtailed or decreased during the Plan Year. Termination of this Plan will not be effective until one year following announcement of such change by the Company.

If any provision of this Plan is or in the future becomes contrary to any applicable law, rule, regulation or order issued by competent government authority, the Company reserves the sole right to amend or discontinue this Plan in its discretion without notice.

HIPAA APPENDIX
HIPAA Privacy Compliance

Section 1. Purpose. The provisions of this Appendix are intended to comply with the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996, as amended, and the regulations promulgated thereunder, as they may be amended from time to time (collectively, "HIPAA") and, in particular, the rules under HIPAA pertaining to the privacy of Individually Identifiable Health Information set forth in 45 C.F.R. Subtitle A, Part 164, Subpart E, as it may be amended from time to time (the "Privacy Rule"). This Appendix shall be effective as of April 14, 2003.

Section 2. Inconsistent Provisions. This Appendix shall supersede any provisions of the Plan to the extent those provisions are inconsistent with this Appendix.

Section 3. Definitions. Each capitalized term used in this Appendix that is not otherwise defined in this Appendix shall have the meaning ascribed to it under HIPAA. For purposes of this Appendix, the following terms shall have the following meanings:

(a) Covered Individual means an individual who is enrolled in and covered under the terms of the Plan, as an employee or otherwise.

(b) Plan Sponsor means E.I. du Pont de Nemours and Company

Section 4. Disclosures to Plan Sponsor for Plan Administration. The Plan may disclose Protected Health Information to the Plan Sponsor for purposes of administering the Plan. These purposes shall include the following:

(a) Confirmation of and other administrative actions and decisions relating to enrollment, contributions to the Plan, premium payments, and the payment of administrative fees;

(b) Response to individual complaints, grievances, or inquiries relating to claims or other Plan administrative matters;

(c) Audits and investigations of claims, systems, network operations, and other matters relating to Plan administration and the review of reports relevant to Plan administration;

(d) Placement of information on a web site or in other accessible form or media;

(e) Legally required reporting, disclosure and other obligations, including: (i) use and disclosure to the Secretary of Health and Human Services when required by the Secretary for its investigation or determination of the compliance of the Plan with the Privacy Rule; (ii) use and disclosure in response to a valid exercise by a Plan Participant, Spouse, or Dependent/Covered Individual of that individual's

rights to gain access to or amend Protected Health Information in his or her own Designated Record Set or obtain information necessary to provide an accounting of certain disclosures of his or her own Protected Health Information; and (iii) appropriate use and disclosure in connection with certain law enforcement or public health activities or judicial or administrative proceedings; and (iv) imposition of sanctions for the failure to need the requirements of HIPAA other laws, or applicable policies and procedures.

(f) De-identification and removal of certain individually identifiable information; and

(g) The transfer of assets or liabilities under the Plan or due diligence in connection with such a transfer.

The Plan may disclose Protected Health Information to the Plan Sponsor for purposes of Payment or Health Care Operations. However, all such disclosures under this Section 4, including these specifically identified must be for administration of the Plan.

Section 5. Requirements of Plan Sponsor. With respect to Protected Health Information that the Plan Sponsor receives pursuant to Section 4, the Plan Sponsor shall:

(a) Not use or disclose the Protected Health Information other than for Plan administration, or as otherwise required by law, and specifically not use or disclose the Protected Health Information for employment-related actions or decisions or in connection with any employee benefit plan or benefit provided by the Plan Sponsor other than the Plan or a health benefit provided under the Plan;

(b) Ensure that any agent (including a subcontractor) to whom the Plan Sponsor provides the Protected Health Information agrees to the same restrictions and conditions with respect to that information as apply to the Plan Sponsor under this Appendix;

(c) Report to the Plan any use or disclosure of the Protected Health Information that is inconsistent with the uses or disclosures set forth in Section 4 of this Appendix and of which the Plan Sponsor becomes aware;

(d) Make the Protected Health Information of a Covered Individual available to that individual, upon the individual's written request, in accordance with the requirements of the Privacy Rule;

(e) Incorporate amendments of information included in the Designated Record Set of a Covered Individual as and to the extent required by the Privacy Rule;

(f) Make available to a Covered Individual upon the individual's written request, the information necessary to provide an accounting of the disclosures of Protected Health Information as and to the extent required by the Privacy Rule;

(g) Make the Plan Sponsor's internal practices, books and records relating to the use and disclosure of the Protected Health Information available to the Secretary of Health and Human Services for determinations as to the compliance of the Plan with HIPAA;

(h) If feasible, return or destroy all of the Protected Health Information that the Plan Sponsor maintains and retain no copies thereof; or, if such return or destruction is not feasible, limit further uses and disclosures of Protected Health Information to the purposes that make the destruction or return infeasible; and

(i) Ensure that members of its Workforce shall have access to the Protected Health Information only in connection with performance of the administrative functions that the Plan Sponsor performs for the Plan. The following individuals or classes of individuals shall have access to such Protected Health Information:

(1) Site Benefit Advocates;

(2) Employee Assistance Counselors and Employee Assistance Director and Coordinator;

(3) Legal – Employee Benefits and Labor Groups;

(4) Finance – Health Care Actuarial and Benefits Accounting Groups;

(5) People Managing Processes (HR) – Health Management Group, and Benefits Policy Design and Deployment;

(6) Integrated Health Services – Chief Medical Officer;

(7) Board of Benefits and Pensions;

in accordance with the rules set forth in any applicable internal policies and procedures.

In addition, support staff assisting the above members of the Plan Sponsor's workforce, including clerical, mailroom, fax delivery, and information technology staff may have access to Protected Health Information.

(j) Ensure that, if the Plan Sponsor becomes aware of any issues relating to non-compliance with the requirements of Section 4 or 5 of this Appendix, the Plan Sponsor shall undertake an investigation to determine the extent, if any, of such non-compliance; the individuals, policies, or practices responsible for the non-compliance; and, to the extent feasible, appropriate means for curing or mitigating the effects of non-compliance and preventing such non-compliance in the future. Any individual who is determined by the Plan Sponsor to be responsible for such non-compliance, shall be subject to disciplinary action, as determined by the Plan Sponsor, in its sole discretion. Such disciplinary action may include one or more of the following to the extent not inconsistent with other applicable law: warning or reprimand, required additional training and education

with respect to the use or disclosure of or requests for Protected Health Information, limitations on or revocation of access to Protected Health Information, diminution of duties, suspension, disqualification for bonus or other pay or promotion, demotion in pay or status, removal from position or discharge.

Section 6. Access to Protected Health Information. The Plan shall disclose Protected Health Information to the Plan Sponsor and to the individuals described in Section 5(i) pursuant to disclosures described in Section 4 only if the Plan Sponsor has certified to such entity that the Plan has been amended to incorporate the provisions of Sections 4 and 5 of this Appendix and that the Plan Sponsor agrees with the restrictions and other rules set forth in Section 5.

Section 7. Personal Representative. The Plan shall recognize an individual who is the Personal Representative of a Covered Individual as if the individual were the Covered Individual himself or herself, provided that the individual satisfies the procedures established by the Plan Sponsor for verifying a Personal Representative's status and authority.

Section 8. Other Disclosures to Plan Sponsor. Nothing in this Appendix shall prohibit or, in any way limit the Plan from disclosing Protected Health Information to the Plan Sponsor where HIPAA permits such disclosure in the absence of the provisions set forth in Sections 4 and 5, including the disclosure of Protected Health Information:

(a) Pursuant to and in accordance with a valid individual authorization under the Privacy Rule;

(b) That is Summary Health Information upon the Plan Sponsor's request for purposes of modifying, amending or terminating the Plan or obtaining bids from a Health Insurance Issuer;

(c) Contained in a Limited Data Set pursuant to and in accordance with a valid Data Use Agreement for purposes of research, public health activities and health care operations;

(d) Pursuant to a Business Associates Contract;

(e) Regarding enrollment in or disenrollment from the Plan or option under the Plan;

(f) For purposes of Treatment;

(g) For epidemiology research; or

(h) To employees who work in Legal to the extent necessary to respond to, defend against, and provide necessary information to outside counsel for responding to and defending against, lawsuits by Plan participants against the Plan and/or Plan Sponsor, or other lawsuits that require benefits information or Protected Health Information, or to the extent necessary to enforce subrogation provisions of the Plan;

to the extent permitted by HIPAA.

Section 9. Effect on Health Insurance Issuers. Health Insurance Issuers providing benefits under the Plan may disclose information to the Plan Sponsor under the same terms and conditions as apply to the Plan under other Sections of this Appendix. With respect to Protected Health Information received from a Health Insurance Issuer, the Plan Sponsor shall have the same obligations to that Health Insurance Issuer that it has to the Plan with respect to Protected Health Information received from the Plan.

Section 10. Action by the Plan Sponsor. The Plan Sponsor may act as prescribed in this Appendix or may delegate, in writing and in its sole discretion, any and all of its functions under this Appendix to the relevant privacy officer or other officer(s) or employee(s) of the Plan Sponsor. The Plan Sponsor or such delegate shall have the authority to establish rules and prescribe forms and procedures for performing its functions hereunder.

BENEFLEX

MEDICAL CARE PLAN

Originally Adopted - January 1, 1992

E. I. du Pont de Nemours and Company

XVII. IRREVOCABLE ELECTIONS

Elections made under this Plan (or deemed to have been made) shall be irrevocable and binding for the balance of the Plan Year, provided, however, that such elections may be revoked or changed prospectively, as to the balance of the Plan Year, but only in the event of, and consistent with, a change in the employee's family status or benefit coverage related to employment. Coverage for a dependent may be added retroactively, in which case the price of coverage will be by after-tax deduction.

XVIII. ADMINISTRATION

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XIX. MODIFICATION OR TERMINATION OF THE PLAN

The Company reserves the sole right to change or discontinue this Plan in its discretion provided, however, that any change in price or level of coverage shall be announced at the time of annual enrollment and shall not be changed during a Plan Year unless coverage provided by an independent, third-party provider is significantly curtailed or decreased during the Plan Year. Termination of this Plan will not be effective until one year following announcement of such change by the Company.

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BENEFLEX
MEDICAL CARE PLAN

Originally Adopted January 1, 1992
Last Amended January 1, 1994

E. I. du Pont de Nemours and Company

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BENEFLEX
MEDICAL CARE PLAN

Originally Adopted January 1, 1992
Last Amended January 1, 1995

E. I. du Pont de Nemours and Company

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BENEFLEX
MEDICAL CARE PLAN

Originally Adopted January 1, 1992
Last Amended January 1 , 1996

E. I. du Pont de Nemours and Company

XVII. APPLICATION FOR BENEFITS

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BENEFLEX
MEDICAL CARE PLAN

Originally Adopted January 1, 1992
Last Amended January 1, 1999

E. I. du Pont de Nemours and Company

XVI. PRICE OF COVERAGE

The price of coverage under this Plan during each Plan Year will be determined by the Company. The price of coverage will be deducted from the participating employee's compensation.

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BENEFLEX
MEDICAL CARE PLAN

Originally Adopted January 1, 1992
Last Amended January 1, 2000

E. I. du Pont de Nemours and Company

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XX. MODIFICATION OR TERMINATION OF THE PLAN

The Company reserves the sole right to change or discontinue this Plan in its discretion provided, however, that any change in price or level of coverage shall be announced at the time of annual enrollment and shall not be changed during a Plan Year unless coverage provided by an independent, third-party provider is significantly curtailed or decreased during the Plan Year. Termination of this Plan will not be effective until one year following announcement of such change by the Company.

If any provision of this Plan is or in the future becomes contrary to any applicable law, rule, regulation or order issued by competent government authority, the Company reserves the sole right to amend or discontinue this Plan in its discretion without notice.

DBH/Kah/BNFLX2000.DOC
1/2000

BENEFLEX
MEDICAL CARE PLAN

Originally Adopted - January 1, 1992

Last Amended - January 1, 2001

E. I. du Pont de Nemours and Company

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BENEFLEX
MEDICAL CARE PLAN

Originally Adopted - January 1, 1992
Last Amended - June 1, 2001

E. I. du Pont de Nemours and Company

XVII. APPLICATION FOR BENEFITS

Application for benefits under this Plan must be filed with the Contract Administrator on the forms provided. Filing any claim for benefits under this Plan will constitute an authorization to any physician, hospital, dentist, pharmacy, insurance company, employer or organization to release any information regarding the claim for the purpose of validating and determining benefits payable or for audit or statistical purposes.

XVIII. IRREVOCABLE ELECTIONS

Elections made under this Plan (or deemed to have been made) shall be irrevocable and binding for the balance of the Plan Year, provided, however, that such elections may be revoked or changed in such manner as the Company may prescribe, but only in the event of, and consistent with, a change in the employee's family status or benefit coverage related to employment. Coverage for a dependent may be added retroactively, in which case the price of coverage will be by after-tax deduction.

XIX. ADMINISTRATION

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BENEFLEX
MEDICAL CARE PLAN

Originally Adopted - January 1, 1992
Last Amended - January 1, 2002

E. I. du Pont de Nemours and Company

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BENEFLEX
MEDICAL CARE PLAN

Originally Adopted - January 1, 1992

Last Amended - January 1, 2003

E. I. du Pont de Nemours and Company

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BENEFLEX
MEDICAL CARE PLAN

Originally Adopted -- January 1, 1992

Last Amended -- April 14, 2003

E. I. du Pont de Nemours and Company

XVIII. IRREVOCABLE ELECTIONS

Elections made under this Plan (or deemed to have been made) shall be irrevocable and binding for the balance of the Plan Year, provided, however, that such elections may be revoked or changed in such manner as the Company may prescribe, but only in the event of, and consistent with, a change in the employee's family status or benefit coverage related to employment. Coverage for a dependent may be added retroactively, in which case the price of coverage will be by after-tax deduction.

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If any provision of this Plan is or in the future becomes contrary to any applicable law, rule, regulation or order issued by competent government authority, the Company reserves the sole right to amend or discontinue this Plan in its discretion without notice.

PAPER, ALLIED-INDUSTRIAL, CHEMICAL and ENERGY WORKERS INTL. UNION
PACE LOCAL 2-786
IBDW AFFILIATE

Mark A. Schilling, President
Thomas M. Campbell, Vice President
Carole E. Price, Secretary
Karen L. West, Treasurer

October 10, 2001

Frank B. Ingraham
Human Resource Coordinator

The following information is essential to the Union's ability to properly represent the bargaining unit employees in evaluating the health care cost increase that has been proposed by DuPont. This information will allow the Union to confirm and verify the accuracy of the cost shares as represented by DuPont, and verify that DuPont is in fact paying a full 50% of the annual premium increase.

1. Provide premium increase data and calculations and related rating information for our site for years 1996, 1997, 1998, 1999, and 2000. This data must include (a) co-pays; (b) deductibles; (c) premiums; and, (d) administrative costs. If there is other data necessary for the Union to understand how DuPont determines premium increase rates, please provide it.

2. Provide the total amounts of (a) premiums paid; (b) deductibles paid; and (c) co-payments paid by covered plan members for our site for the years 1996 through 2000.

3. For the Beneflex plan and the cost sharing arrangements which apply broadly to all DuPont locations, please (a) confirm that the total cost of the Plan equals company pay-out plus employee premiums plus employee co-payments plus employee deductibles; (b) provide the total company pay-out for each year 1996 through 2000; (c) provide the total premiums paid by covered employees in each of these years; (d) provide the total co-payments paid by covered employee in each of these years; (e) provide the total deductibles paid by covered employees in each of these years.

   For Items 3(b)-(e), please breakdown the information into corporate-wide data and specific site data.

4. Please provide dollar amounts showing the relationship of DuPont's payout to total plan costs (company wide) for the years 1996 through 2000. In performing these tabulations, assume total plan costs equals company payout plus employee premiums, co-pays and deductibles.

5. Please provide the dollar amounts paid company wide to all vendors and consultants and a description of the work or functions performed by each.

6. Please provide the dollar amounts paid company wide to DuPont in-house personnel and a description of administrative functions performed by such personnel.

7. Premiums for any upcoming year are calculated on the basis of estimated claims that are derived by applying certain assumptions to actual claims from prior years. Ultimately, with the passage of time, estimated claims become actual claims, and the Union should be able to determine the accuracy of premium projections. To enable the Union to do this, please provide the following, breaking down the information into corporate-wide data and specific site data for each category set forth below (a-e):

   a. Please provide the 1996 through 2000 Premium Increases sheets.

   b. Please provide the hard claim figures for these years.

   c. Please specify whether the hard claim figures include administrative charges.

   d. Please explain the process used to incorporate over-estimates of projected claims in an earlier year into calculations of monthly premium rates in a subsequent year.

   e. If adjustments for over-estimates have not been made, please explain how DuPont believes that this constitutes fiduciary responsibility.

8. Please provide the name of the individual who is responsible for DuPont's actuary function.

9. For the years 1996 through 2000, please provide the cost sharing for each plan type (i.e., family, 2 person, single). Please break this information down by employee share, company share and plan option (i.e. LP, etc.).

To properly represent the employees in evaluating the annual premium increase it is respectfully requested that this information be received by the Union no later than November 1, 2001; in any event, it is requested that the increase in the premium not be put into effect until the requested information is provided and good faith negotiations are completed.

Should DuPont challenge its obligation to supply any portion of the requested information, or have legitimate questions concerning the meaning or relevancy of any portion of this request, such challenges or questions will not relieve DuPont of its duty to supply the remaining portions.

If items of information are withheld for reasons of confidentiality, please provide a written description of each item of withheld material and the reasons for the claims of confidentiality. Please know that the Union will not accept blanket claims of confidentiality. Such description shall include the title of the document, its general contents, authors, recipients and the name and title of any attorneys where a claim of privilege is exercised. With regard to information that is withheld for the alleged proprietary or trade secret nature of the material, the Union requests that proprietary or trade secret information be struck so that the material can be supplied within the two-day period. Acceptance of such material by the Union does not constitute a waiver on the part of the Union to its right to challenge the **DuPont's claim to confidentiality at a later date.**

Joseph J. Witkowski, II
Contract Chairperson

Passed to mail on 6/14/04

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KATHLEEN A. HOSTETLER
ATTORNEY AT LAW

June 14, 2004

HAND DELIVERED

Denise M. Keyser, Esq.
Ballard Spahr Andrews & Ingersoll, LLP
Plaza 1000-Suite 500
Voorhees, New Jersey 08043-4636

RE: E.I. DuPont de Nemours and Co., Inc. and PACE, Local 2-786

Dear Ms. Keyser:

Part of the Company's proposed contract package is the following change to Article IX, "Industrial Relations Plants and Practices" regarding the benefit provisions:

> Preserve and clarify Management's right to apply Company-wide annual changes to Beneflex to Edge Moor participants both during the CBA and during any "open contract" period until a new Agreement is reached between the Parties.

This proposal effectively allows the Company to make recurring unilateral changes with unfettered discretion in health care during the term, as well as post-expiration, of the contract.

The Union recognizes that the Company may propose this language, as it is not illegal. However, because this proposal is a permissive subject, the Union is free to consider it but is not mandated to bargain it to impasse, as the Company may not legally compel the Union to relinquish its right to bargain to impasse only those subjects that are mandatory. Furthermore, the Company may not legally implement any contract proposal if it insists on the above-referenced permissive subject.

Very truly yours,

Kathleen A. Hostetler
Counsel for PACE

cc: Kenneth O. Test, Region III, Vice President & Director, via fax
John Barcellona, PACE International Representative, via fax
James L. Briggs, PACE, International Representative, via fax
Mark Schilling, President, PACE Local 2-786, via fax
Bargaining Committee, Local 2-786, via fax, via fax

2236 ASH STREET • DENVER, COLORADO 80207
PHONE 303.329.6898 • FAX 303.329.8067

PASSED TO MMBT
6/21/04
408

KATHLEEN A. HOSTETLER
ATTORNEY AT LAW

June 21, 2004

HAND DELIVERED

Denise M. Keyser, Esq.
Ballard Spahr Andrews & Ingersoll, LLP
Plaza 1000-Suite 500
Voorhees, New Jersey 08043-4636

RE: E.I. DuPont de Nemours and Co., Inc. and PACE, Local 2-786

Dear Ms. Keyser:

At negotiations this morning, you asked the following question regarding Section 3, Article IX (Industrial Relations Plans and Practices, the Beneflex plan):

> Is the Union *not objecting to* (*sic agreeing to*) the Employer's right to change the terms of the Beneflex plan during the term of the collective bargaining agreement?

The Union's response to this question is that it is not accepting or rejecting this existing language at this time. The Union notes that the Employer's instant proposal modifies Section 3 by extending the right to change Beneflex post-expiration. It is to this modification that the Union objects.

Very truly yours,

Kathleen A. Hostetler
Counsel for PACE

cc: Kenneth O. Test, Region III, Vice President & Director, via fax
John Barcellona, PACE International Representative, via fax
James L. Briggs, PACE, International Representative, via fax
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Bargaining Committee, Local 2-786, via fax, via fax

2236 ASH STREET • DENVER, COLORADO 80207
PHONE 303.329.6898 • FAX 303.329.8067

PASSED TO MEET ON 6/21/04

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KATHLEEN A. HOSTETLER
ATTORNEY AT LAW

June 21, 2004

HAND DELIVERED

Denise M. Keyser, Esq.
Ballard Spahr Andrews & Ingersoll, LLP
Plaza 1000-Suite 500
Voorhees, New Jersey 08043-4636

RE: E.I. DuPont de Nemours and Co., Inc. and PACE, Local 2-786

Dear Ms. Keyser:

The Union has considered DuPont's proposal to extend the management's rights provision of Section 3, Article IX (Industrial Relations Plans and Practices, the Beneflex plan), to any open-contract period, i.e., contract expiration period, until a new collective bargaining agreement is reached by the parties. This proposal would allow DuPont to unilaterally implement changes to the benefit provisions after the expiration of the contract.

DuPont's proposal to extend its management rights provision to the post-expiration period effects the right to bargain over the plan, and not the terms of the plan itself, and is therefore a permissive subject of bargaining. Accordingly, the Union has determined that it is not interested in voluntarily considering this proposal for the successor contract, and considers this proposal off the bargaining table.

Very truly yours,

Kathleen Hostetler

Kathleen A. Hostetler
Counsel for PACE

cc: Kenneth O. Test, Region III, Vice President & Director, via fax
John Barcellona, PACE International Representative, via fax
James L. Briggs, PACE, International Representative, via fax
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2236 ASH STREET • DENVER, COLORADO 80207
PHONE 303.329.6898 • FAX 303.329.8067

KATHLEEN A. HOSTETLER
ATTORNEY AT LAW

October 14, 2004

VIA FACSIMILE

Denise M. Keyser, Esq.
Ballard Spahr Andrews & Ingersoll, LLP
Plaza 1000-Suite 500
Voorhees, New Jersey 08043-4636

RE: E.I. DuPont de Nemours and Co., Inc. and PACE, Local 2-786

Dear Ms. Keyser:

Recently, the Employer mandated that the employees at its Edge Moor facility make certain election of benefits from its proposed changes to the Beneflex Plan. These elections must be made during a stated window period, and will be effective January 1, 2005.

While the employees are required to make these elections, the Union objects to any implementation of changes to the Beneflex plan. The Employer must bargain in good faith to impasse or agreement on any proposed changes. Accordingly, the Union requests bargaining on proposed changes to the Beneflex plan.

Moreover, because the parties are in negotiations for a successor agreement, the Employer may not implement until impasse or agreement is reached on the contract as a whole. Any reliance on the management rights clause of the expired agreement as authority to implement changes to the health care benefits of the collective bargaining agreement is misplaced. The contract is expired, thus the management rights clause is without effect.

Please know that if DuPont implements any changes to the health care benefits without bargaining in good faith to impasse or agreement with the Union first, the Union will file charges with the National Labor Relations Board.

Very truly yours,

Kathleen A. Hostetler
Counsel for PACE

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cc: Kenneth O. Test, Region III, Vice President & Director, via fax
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PAPER, ALLIED-INDUSTRIAL, CHEMICAL and ENERGY WORKERS INTL. UNION
PACE LOCAL 2-786
P. O. Box 9634
Edge Moor, DE 19809

Mark A. Schilling, President
Thomas M. Campbell, Vice President
Tera Taylor, Secretary
Darren DiDonato, Treasurer

UNION PROPOSAL – 11/8/04

The Company will offer to all bargaining unit employees the Blue Cross and Blue Shield of Delaware the Exclusive Provider Organization Plan with the attached vision and dental riders and will also provide the attached Life and Accidental Death and Dismemberment policy. Bargaining unit members will be responsible for 30% of the premium costs associated with these plans. If during the course of this agreement, the premium costs of the plan increases by 10% or more than the concurrent cost increases (COBRA rate) for the Company's Beneflex program, either party may reopen this agreement solely for purposes of determining whether to offer Beneflex coverage in lieu of this plan or whether an adjustment to the cost sharing premium costs is necessary.

The Company's vacation buy back and financial planning programs contained in the Beneflex shall be offered to all bargaining unit members during the term of this agreement.

BlueCross BlueShield of Delaware
A CareFirst Company

One Brandywine Gateway
P.O. Box 1991
Wilmington, DE 19899-1991
www.bcbsde.com

CALCULATION OF RATES FOR PROSPECTIVE

GROUP: DUPONT EDGEMOOR

FOR PERIOD: 1/1/05 TO 12/31/2005

EPO with $7/$20 ($16/$45 Mail Order) or 30% MAC C Drug Card

	#	RATES	MONTHLY PREMIUM
Indv.	34	$384.55	$13,074.77
Sub/Children	6	$615.28	$3,691.70
Sub/Spouse	41	$884.48	$36,263.66
Family	41	$1,076.75	$44,146.57
	122		$97,176.69

These rates assume a full waiver on pre-existing conditions.
These rates assume no broker commission.
These rates assume dependent coverage to age 19 and student coverage to age 25.
For a 1/1/05 effective date, ALL enrollment paperwork must be at BCBSD by 12/15/04.

** See attached benefit description for EPO.

BlueCross BlueShield of Delaware
A CareFirst Company

A SUMMARY OF BLUE CROSS BLUE SHIELD® EXCLUSIVE PROVIDER ORGANIZATION (EPO) BENEFITS FOR PACE LOCAL 2-786

SERVICE	IN-NETWORK	OUT-OF-NETWORK
PREVENTIVE MEDICAL SERVICES		
▪ Periodic Physical Exams	100% covered.	Not covered.
▪ Routine Annual GYN Exam	100% covered.	Not covered.
▪ Routine Mammogram	100% covered.	Not covered.
▪ Routine Sigmoidoscopy & Colonoscopy	100% covered.	Not covered.
▪ Routine Pap Smear *(Lab charges)*	100% covered.	Not covered.
▪ Routine Well-Child Care	100% covered.	Not covered.
▪ Immunizations	100% covered.	Not covered.
▪ Periodic Vision Exams	$20.00 per visit.	Not covered.
▪ Periodic Hearing Exams	100% covered.	Not covered.
▪ Prostate Screening Antigen Test *(Lab charges)*	100% covered.	Not covered.
▪ Lead Poisoning Screening Test *(Lab charges)*	100% covered.	Not covered.
TREATMENT OF ILLNESS OR INJURY		
▪ Doctor's Office Visit for Diagnosis & Treatment	$20.00 per visit.	Not covered.
▪ Specialist/Referral Care	$20.00 per visit.	Not covered.
▪ Allergy Testing	$20.00 per visit.	Not covered.
▪ Allergy Treatment	$20.00 per visit.	Not covered.
▪ Laboratory Services	100% covered.	Not covered.
▪ Imaging & Machine Testing Services	90% covered.[1]	Not covered.
▪ Physical Therapy	90% covered[1] for up to 60 consecutive days per acute condition.	Not covered.
▪ Occupational & Speech Therapy	90% covered[1] for up to 60 consecutive days per acute condition.	Not covered.
▪ Radiation Therapy & Chemotherapy	90% covered.[1]	Not covered.
▪ Home/Nursing Home Visits	PCP Home Visit: $20.00 per visit. Nursing Home Visit: 90% covered.[1]	Not covered.

[816]

A SUMMARY OF BLUE CROSS BLUE SHIELD EPO BENEFITS FOR PACE LOCAL 2-786 (CONT.)

SERVICE	IN-NETWORK	OUT-OF-NETWORK
TREATMENT OF ILLNESS OR INJURY (cont.)		
▪ Chiropractic	$20.00 per visit for up to 30 visits per calendar year.	Not covered.
IN THE HOSPITAL		
▪ Semiprivate Room & Board (including intensive care, if medically appropriate)	90% covered. [1]	Not covered.
▪ Physician's & Surgeon's Services	90% covered. [1]	Not covered.
▪ Other Medical Professional Services	90% covered. [1]	Not covered.
SURGERY		
▪ Outpatient	90% covered. [1]	Not covered.
MATERNITY		
▪ Prenatal & Postnatal Care	90% covered. [1]	Not covered.
▪ Delivery: Hospital	90% covered. [1]	Not covered.
▪ Delivery: Physician	90% covered. [1]	Not covered.
▪ Birthing Center	90% covered. [1]	Not covered.
EMERGENCY SERVICES		
▪ Physician's Office	$20.00 per visit.	$20.00 per visit.
▪ Hospital or Outpatient Emergency Facilities	$50.00 per visit (waived if admitted).	$50.00 per visit (waived if admitted).
AMBULANCE	$50.00 per occurrence.	$50.00 per occurrence.
OTHER SERVICES		
▪ Inpatient Private Duty Nursing	90% covered[1] for up to 240 hours in 12-month period.	Not covered.
▪ Prosthetic Devices and Durable Medical Equipment	90% covered. [1]	Not covered.
▪ Skilled Nursing Facility	90% covered[1] for up to 120 days per confinement.	Not covered.
▪ Home Health Care	90% covered[1] for up to 100 visits per calendar year.	Not covered.

[817]

A SUMMARY OF BLUE CROSS BLUE SHIELD EPO BENEFITS FOR PACE LOCAL 2-786 (CONT.)

SERVICE	IN-NETWORK	OUT-OF-NETWORK
ALCOHOL AND SUBSTANCE ABUSE TREATMENT	90% covered[1] for up to 31 inpatient days or 62 outpatient days per treatment period. Maximum of 2 treatment periods per lifetime, separated by 365 days. Two outpatient days reduce inpatient days by 1 day; one inpatient day reduces outpatient days by 2 days.	Not covered.
SERIOUS MENTAL HEALTH CARE		
▪ Inpatient and Partial Hospitalization	Same as Other Medical Care.	Not covered.
▪ Outpatient	Same as Other Medical Care.	Not covered.
OTHER MENTAL HEALTH CARE		
▪ Inpatient and Partial Hospitalization	90%[1] covered for up to 31 inpatient days or 62 partial hospitalization days per calendar year. One inpatient day reduces partial hospitalization days by two days; two partial hospitalization days reduce inpatient days by one day.	Not covered.
▪ Outpatient Mental Health	$20.00 per visit for up to 20 visits per calendar year.	Not covered.

PRESCRIPTION DRUGS (Per Prescription or Refill)	**34-DAY SUPPLY RETAIL**	**90-DAY SUPPLY MAIL ORDER**
▪ Generic	$7.00 Copayment or 30%, whichever is greater.	$16.00 Copayment.
▪ Brand	$20.00 Copayment or 30%, whichever is greater.	$45.00 Copayment.

[818]

A SUMMARY OF BLUE CROSS BLUE SHIELD EPO BENEFITS FOR PACE LOCAL 2-786 (CONT.)

1 In-Network benefits are covered at the indicated percentage for that service until the coinsurance totals $1,600 per person ($3,200 per family). Two individuals must meet the coinsurance expense limit in order for benefits to be paid at 100% of the allowable charge for the rest of the family members for the remainder of the calendar year.

The coinsurance expense limit does not include services for prescription costs and office visit copayments.

Full contract benefits are contingent upon following the guidelines of the Managed Care Program. Mental health and substance abuse care must be authorized in advance by the Case Management Center and provided by an authorized provider to receive full contract benefits.

All percentages listed above apply to Blue Cross Blue Shield of Delaware's maximum allowable charge. When calculating coinsurance expenses, only the allowable charges are considered.

If an individual chooses a Preferred or Non-Preferred Brand drug when a Generic drug is available, he or she will have to pay the difference between the charge for the Preferred or Non-Preferred Brand drug and the Generic drug, plus the copay for the Generic Drug. After a member has paid out $1,500 per calendar year on prescription drug coinsurance, all prescriptions are thereafter paid at 100%. [819]

This is not a contract. This benefit comparison is intended to provide you with a general overview of these Blue Cross Blue Shield of Delaware health benefit program.

Blue Cross Blue Shield of Delaware and CareFirst, Inc., are independent licensees of the Blue Cross and Blue Shield Association.

BlueCross BlueShield of Delaware
A CareFirst Company

One Brandywine Gateway
P.O. Box 1991
Wilmington, DE 19899-1991
www.bcbsde.com

CALCULATION OF RATES FOR DENTAL

GROUP: DUPONT EDGEMOOR

FOR PERIOD: 1/1/05 TO 12/31/2005

DENTAL
100/75/50/50, $50/$150 Ded on Blocks B & C, $2000 annual max on Blocks A, B & C, $1200 lifetime max on Block D
Schedule 52

	#	RATES	MONTHLY PREMIUM
INDIVIDUAL:	34	$32.66	$1,110.56
SUB/CHILD(REN):	6	$60.21	$361.26
SUB/SPOUSE:	41	$46.56	$1,908.78
FAMILY:	41	$74.24	$3,044.01
	122		$6,424.61

These rates assume no commission.
These rates assume dependent coverage to age 19 and student coverage to age 25.
For a 1/1/05 effective date, ALL enrollment paperwork must be at BCBSD by 12/15/04.

BlueCross BlueShield of Delaware
A CareFirst Company

One Brandywine Gateway
P.O. Box 1991
Wilmington, DE 19899.1991
www.bcbsde.com

PACE LOCAL 2-786 DENTAL PLAN SUMMARY

You must get approval from BCBSD before you have dental treatment for $400 or more.

Many services have limits, copayments or coinsurance.

DEDUCTIBLES

Calendar year deductibles for Types B and C Services:

- $50 per individual per year
- $150 per family per year
- 3 family members must meet the individual deductible for the family deductible to be met

BENEFITS

Service	Benefit
Type A - Preventive and Diagnostic Services	100% covered, with no deductible
Type B - Basic Services	75% covered, after the deductible
Type C - Major Services	50% covered, after the deductible
Type D - Orthodontia	50% covered, with no deductible

CALENDAR YEAR MAXIMUM

- Calendar year dollar maximum per individual: $2,000.
- Applies to Types A, B, and C services.

Once you meet the calendar year maximum per person, no other benefits will be paid for the rest of the calendar year. Charges over this maximum may not be carried forward or backward to any other year.

The Type D (Orthodontia) benefit maximum is $1,200 as a Lifetime Maximum.

This is not a contract. It is a guide to provide you with an overview of the Dental Care Plan. Your Group Contract contains the services and benefits. The Group Contract explains how benefits are provided. Should there be any questions about services and benefits, the Group Contract will rule

Keep this schedule of benefits with your Dental Care Booklet.

BlueCross BlueShield of Delaware
A CareFirst Company

One Brandywine Gateway
P.O. Box 1991
Wilmington, DE 19899-1991
www.bcbsde.com

CALCULATION OF RATES FOR VISION

GROUP: DUPONT EDGEMOOR

FOR PERIOD: 1/1/05 TO 12/31/2005

	VISION RIDER		
	#	RATES	MONTHLY PREMIUM
INDIVIDUAL:	34	$3.11	$105.74
SUB/CHILD(REN):	6	$4.98	$29.88
SUB/SPOUSE:	41	$7.15	$293.15
FAMILY:	41	$8.71	$357.11
	122		$785.88

These rates assume no commission.
These rates assume dependent coverage to age 19 and student coverage to age 25.
For a 1/1/05 effective date, ALL enrollment paperwork must be at BCBSD by 12/15/04.

BlueCross BlueShield
of Delaware
A CareFirst Company

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P.O. Box 1991
Wilmington, DE 19899-1991
www.bcbsde.com

VISION BENEFITS
FOR PACE LOCAL 2-786

WHAT'S COVERED

Each covered individual has coverage for vision benefits up to the calendar year maximum shown below.

Vision Services & Supplies	Maximum
■ Complete Eye Exam and Analysis	Covered under medical
■ Frames	$24.00
■ Lenses per Pair:	
▪ Single Lenses	$14.00
▪ Bifocal Lenses – Single	$25.00
▪ Bifocal Lenses – Double	$47.00
▪ Trifocal Lenses	$37.00
▪ Lenticular Including Aspheric	$112.00
▪ Non-Cosmetic Contact Lenses (Permanent or Disposable)	$112.00

GUIDELINES

- Frames are limited to one pair in a 24-month period.
- Spectacle lenses are limited to one pair in a 12-month period.

WHAT'S NOT COVERED

- Injury or illness on the job.
- Care your employer requires as a condition of employment.
- Care given through your employer's medical department or clinic.
- Sunglasses, even if you have a prescription.
- Services which would be covered under another part of this health care plan.
- Vision testing.
- Lenses or frames you can have without charge, or that would be without charge if you didn't have vision benefits.
- Vision care or supplies you get before being covered under this plan.
- Vision care or supplies you get after you lose coverage under this plan.
- Replacement lenses, frames or contacts which are lost or damaged, unless you can satisfy the guidelines above.

Proposed Plan

of

Group Insurance Benefits

Designed for:

Dupont Edgmoor

November 1, 2004

Presented By:

Fort Dearborn Life Insurance Company

Introduction

FINANCIALLY STRONG

Before you purchase any insurance policy, it is important to review the financial strength and stability of the insurance company backing the policy. Since 1969, Fort Dearborn Life Insurance Company (Fort Dearborn) has continued to evolve and grow. Licensed in 49 states (except New York), the District of Columbia and both the U.S. and British Virgin Islands, Fort Dearborn proudly ranks among the top group life companies in the nation, and is a member of the Preferred Financial Group companies.

Fort Dearborn's strong ratings by independent insurance analysts are the cornerstone on which its national reputation is built. The A.M. Best Company in its June 2002 report rated Fort Dearborn **"A" (Excellent)** for financial condition, operating performance and market profile. In its November 2002 report Standard & Poor's rates Fort Dearborn **"A" (Strong)** for its financial strength, citing its good capitalization and excellent portfolio. Fort Dearborn is a wholly owned subsidiary of Health Care Service Corporation (HCSC), a Mutual Legal Reserve Company, the largest health care insurance provider in the state of Illinois. Some other highlights:

- **$67.5 billion** of life insurance in force
- **$466 million** of Earned Premium in 2002
- **1.6 million** Covered Employees
- **36,000+** In-Force Groups

Fort Dearborn offers a variety of Group Life, Disability and financial insurance products designed to increase the value of employment at your company and enhance your ability to attract and retain skilled, experienced employees. These insurance products include: Group Term Life, Accidental Death & Dismemberment (AD&D), Dependent Life, Short Term Disability, Long Term Disability, and Fixed Annuities.

We also offer a complete portfolio of employee paid *voluntary* benefits including:

- Life and AD&D
- Short Term Disability
- Long Term Disability
- Many others

PREFERRED FINANCIAL GROUP COMPANIES

The life companies that form the Preferred Financial Group (PFG) companies are Fort Dearborn Life, Medical Life, and Colorado Bankers Life. Together the PFG companies rank 11th* nationally in terms of in force group life volume, and the 17th* largest carrier in terms of group life premiums. A larger corporation is better equipped to handle the rapidly changing and increasingly competitive environment that is the reality of today's insurance and financial services industries. By carefully integrating certain operations with shared technology and shared staff support, the PFG companies have seen substantial cost savings and lower operating expenses. Consolidating functions and combining resources also provides the PFG companies with the opportunity to further enhance service to producers and consumers. The Company is a separate corporate entity from its affiliated companies and is not financially responsible for their products.

**Based on results shown in the National Underwriter's Life/Health Services Edition, August 18, 2003.*

YOU BECOME OUR MOST IMPORTANT CUSTOMER

This proposal outlines your benefits and premium costs. In considering this Proposal for Insurance Coverage, keep in mind that we put the following priorities foremost in our relationship with our customers:

1. To be responsive to your needs by providing prompt and courteous service at all times;
2. To pay all eligible claims as quickly and accurately as possible;
3. To assist you with the technical expertise needed in your employee benefit planning;
4. To monitor our company expenses in order to provide the best coverage to you at the lowest possible cost.

You are a primary concern to all of us at Fort Dearborn Life Insurance Company, and can be assured we'll do our best to serve your present and future insurance needs. We invite you to join our growing family of satisfied customers, and look forward to our association with you.

Schedule of Benefits
Life/AD&D

Eligibility:

All active full-time employees are eligible for coverage. Full-time means that the employee is actively employed at least 30 hours each week on a regularly scheduled basis for his employer as of the effective date. Actively employed means the employee is performing the normal duties of his occupation.

Employees not actively employed as of their effective date will have their coverage deferred until they return to full-time employment.

Benefit Classifications:

CLASS I	All Active Full-Time Employees

Benefit Amounts:

CLASS I	1. times annual salary to a maximum of $ 500,000, but not less than $ 1,000 prior to any applied reductions.

Benefit Notes:

Employee benefits reduce by 35% upon the employee's attainment of age 65, and further reduce to 50% of the original amount upon the employee's attainment of age 70.

Benefits terminate at retirement.

Life and Accidental Death and Dismemberment benefits are rounded to the next higher multiple of $1000, if the benefit is salary based.

Satisfactory Evidence of Insurability will be required for individual amounts of insurance (if available in the above schedule) which exceed the guarantee issue limit of $ 400,000. The guarantee issue limit stated is proportionately reduced according to the scheduled reduction percentages shown above.

Cost Summary

Benefit	Lives	Monthly Rate	Volume	Monthly Cost
Life Insurance	133	$ 0.34 per $1,000	$ 7,891,000	$ 2,682.94
Accidental Death and Dismemberment	133	$ 0.03 per $1,000	$ 7,891,000	$ 236.73

TOTAL MONTHLY COST: **$** 2,919.67

Rates shown for Life insurance are guaranteed for the initial 24 months. Rates shown for STD insurance are guaranteed for the initial 24 months. All coverages have been rated together and may not be sold differently than quoted without approval from Fort Dearborn Life Insurance Company. Coverage must be effective on or prior to January 1, 2005. If a later effective date is desired, rates are subject to modification.

This proposal illustrates the cost of the insurance program and is based upon the information submitted. Actual cost will be determined after an application has been accepted by the Company at its home office and will depend upon data obtained when the program becomes effective.

The rates stated in this proposal assume self administered billing. Billing fees may apply if Fort Dearborn Life billing is required.

A standard Fort Dearborn Life Insurance Company non-participation, non-refund policy and group certificates will be issued. The policy will comply with the statutory requirements of the state in which the policyholder is located. This proposal provides only basic information on the features of the policy. It is not intended to be a complete representation of all terms and provisions of our contract. The Standard group certificates will be issued and will contain complete details of benefits, provisions, and limitations of coverage. In case of conflict between this proposal and the policy, the terms of the policy will govern.

Other Information

1. If any basic coverage is contributory, at least 75% of all eligible employees ***must*** participate, with the exception of Dependent Life coverage. All employees must be enrolled for each non-contributory coverage. All late entrants must provide evidence of insurability to Fort Dearborn Life before coverage becomes effective.

2. The insurer will maintain records for FICA and federal income taxes for short term disability coverage. If requested, the insurer will prepare and issue W-2 Statements on fully insured groups, for each insured receiving disability payments. (Note: A W-2 Statement Agreement will be required).

Group Term Life Insurance Benefit

Benefit

Group Term Life Insurance Benefits are payable in the event of death at any time from any cause.

Beneficiary

The employee may name his own beneficiary and may change the beneficiary at any time. The employee may specify the manner in which he desires the proceeds to be paid.

Waiver of Premium

We may continue the employee's life insurance benefit without the further payment of premium provided:

1. the employee is insured and is actively at work on or after the effective date; and
2. the employee is under age 60 on the date of disability; and
3. we receive written proof of total disability within 12 months of the date of disability; and
4. the total disability has continued without interruption for at least six months; and
5. the employee is still totally disabled when the proof is submitted; and
6. all required premium has been paid.

If waiver of premium is approved, the amount of continued insurance is subject to any reduction of benefits as a result of age or amendment to the policy.

Life insurance coverage will continue without payment of premium until the employee is no longer disabled or reaches age 65, whichever occurs first.

Conversion Privilege

The policy contains a conversion privilege provision which gives an employee whose life insurance terminates or reduces the right to convert to an individual life insurance policy without furnishing evidence of insurability, provided certain conditions are met. The individual conversion policy will be a whole life policy. It will not contain any disability benefits or AD&D. The request to convert must be made within 31 days following termination of coverage.

Annual Earnings

Basic annual salary or weekly wage means the annual/weekly compensation prior to before-tax payroll deductions. It does not include salary or compensation from overtime, bonuses or any other form of extra pay. Commissions will be averaged over the 12 month period preceding the death or disability. The policy definition of earnings may vary for partners and sole proprietors.

Accelerated Death Benefit

Benefit

The accelerated death benefit is 50% of the employee's group term life insurance amount in force on the date we receive proof the employee is Terminally Ill. This sum is limited to a maximum of $150,000 and a minimum of $7,500. For this benefit, Terminally Ill shall mean an Insured has a life expectancy of 12 months or less, due to a medical condition.

Reduction of Benefit

If the employee's group term life insurance benefit is subject to an age reduction within 12 months after the date we receive proof, the accelerated death benefit will be 50% of the reduced group term life insurance benefit.

Benefit Payment

We will pay the benefit during the employee's lifetime if the employee or his legal representative claims the benefit and provides FDL with satisfactory Proof that the employee is Terminally Ill. The benefit is payable in one lump sum to the employee.

Disclosure

This benefit does not apply to Accidental Death and Dismemberment benefits.

Limitations

The benefit will not be payable:

1. for any amount of group term life insurance which is less than $15,000; or
2. for Terminal Illness caused by a suicide attempt, while sane or insane; or self-inflicted injuries; or
3. for a group term life insurance benefit that has been assigned; or
4. for a group term life insurance benefit payable to an irrevocable beneficiary; or
5. to retirees.

Provisions may be slightly different by state. Please refer to the actual policy for the state in which the Policyholder exists.

Premium/Administrative Charge or Fee

There is no Premium and/or Administrative Charge or Fee to the employer or employee for this benefit.

Accidental Death & Dismemberment and Loss of Sight, Speech & Hearing Benefits

Benefit

Accidental Death and Dismemberment and Loss of Sight, Speech and Hearing benefits are payable in the event of death, loss of limbs or loss of eye sight, speech or hearing as result of an accident.

Benefits are payable, provided:

- the loss occurs within 365 days of the Accident;
- the loss is the direct and sole result of the Accident;
- the loss is independent of all other causes.

The amount paid will be as stated below, but will not exceed the Principal Sum stated in the application.

Principal Sum for Loss of:	**One-half of the Principal Sum for Loss of:**	**One-Quarter the Principal Sum for Loss of:**
Life	Sight of One Eye	Thumb and Index Finger of Same Hand
Both Hands	One Hand	
Both Feet	One Foot	
One Hand and One Foot	Speech or Hearing	
Speech and Hearing		
Sight of Both Eyes		
One Hand and the Sight of One Eye		
One Foot and the Sight of One Eye		

The total amount payable for all losses to any employee resulting from any one accident may not be greater than the Principal Sum.

Basic AD&D Features

Seat Belt Benefit: Pays an additional benefit equal to the employee benefit (up to $25,000) if an insured employee dies as the result of a covered accident which occurs while the insured was driving or riding in an automobile driven by a licensed driver who was not intoxicated, under the influence of a controlled substance or impaired. The automobile must be equipped with seat belts, and the seat belts must have been in actual use and properly fastened at the time of the accident. The position of the seat belt must be certified in the official accident report or by the investigating officer. If an official police report certifying that the seat belt was being properly worn, is not available at the time the claim is submitted, the benefit amount will be $1,000.

Air Bag Benefit: An additional benefit amount equal to 5% of the Principal Sum will be payable if the insured dies while driving or riding in an automobile, provided that the insured was positioned in a seat equipped with a factory-installed air bag. The insured must have been properly strapped in the seat belt when the air bag inflated, and the air bag inflated properly upon impact. The maximum benefit payable is $5,000. If it is unclear whether the seat belt was being properly used and the air bag inflated properly, the benefit will be $1,000.

Repatriation Benefit: If an insured employee dies as a result of a covered accident at least 75 miles from his principal residence, up to $5,000 will be paid for the preparation and transportation of the insured employee's body. (Not available in all states)

Education Benefit: If the Principal Sum is payable under the AD&D benefit for the employee's loss of life, each insured child who qualifies will receive reimbursement for incurred educational expenses in a school of higher education beyond the 12th grade. The maximum education benefit is equal to the lesser of the employee benefit amount or $12,000 and will be payable in four equal installments. A benefit of $1,000 is payable for children in elementary or high school. (Not available in all states)

Accidental Death & Dismemberment and Loss of Sight, Speech & Hearing Benefits

Limitations

We will not pay any benefit for any Loss that, directly or indirectly, results in any way from or is contributed to by:

- Any disease or infirmity of mind or body, and any medical or surgical treatment thereof; or;
- any infection, except a pus-forming infection of an accidental cut or wound: or
- Suicide or attempted suicide, while sane or insane; or
- Any intentionally self-inflicted Accident; or
- War, declared or undeclared, whether or not the Insured is a member of any armed forces; or
- Travel or flight in an aircraft while a member of the crew, or while engaged in the operation of the aircraft, or giving or receiving training or instruction in such aircraft; or
- Commission of, participation in, or an attempt to commit an assault or felony; or
- Being under the influence of any narcotic, hallucinogen, barbiturate, amphetamine, gas or fumes, poison or any other controlled substance as defined in Title II of the comprehensive Drug Abuse Prevention and Control Act of 1970, as now or hereafter amended, unless as prescribed by the Insured's licensed physician and used in the manner prescribed. Conviction is not necessary for a determination of being under the influence; or
- Intoxication as defined by the laws of the jurisdiction in which the accident occurred. Conviction is not necessary for a determination of being intoxicated; or
- Active participation in a riot. "Riot" means all forms of public violence, disorder, or disturbance of the public peace, by three or more persons assembled together, whether with or without a common intent and whether or not damage to person or property or unlawful act is the intent or the consequence of such disorder.

Insured Benefit Account

FDL recognizes that when an individual experiences the death of someone with whom they have had a close personal relationship it is a very emotional time in their lives. It is definitely not the appropriate time for them to make major investment decisions involving substantial sums of money that could become available to them as beneficiaries of life insurance policies. As an alternative, the settlement funds are wire transferred directly to an Insured Benefit Account which begins immediately earning a competitive interest rate.

The beneficiary can:

- defer stressful financial decisions,
- consider their investment options, and
- earn competitive money market rates.

We have made the necessary arrangements with US Bank, the 8th largest bank in the U.S. with over $174 billion in assets. All Insured Benefit Accounts are FDIC insured.

There are no monthly fees or service charges on these Insured Benefit Accounts and they can be closed immediately by the beneficiary or kept open for as long as desired.

Voluntary Life Insurance

- Full-time employees and their spouses are eligible for up to $500,000 in $10,000 increments.
- Children age 6 months to 18 years, 23 years if full-time student, can receive a $5,000 or $10,000 benefit. Children age 15 days to 6 months receive a $100 benefit. Benefit is limited to 50% of the employee benefit in Washington.
- Voluntary Life benefits are portable upon retirement or termination for the employee and/or his insured spouse. If an insured employee or spouse elects portability, he may also elect to continue Dependent Child(ren)'s coverage. Ported coverage terminates at age 70. An Additional Purchase Option, which allows an employee to purchase an additional amount (up to $50,000) of term life insurance with satisfactory evidence of insurability, may be available.
- If both employee and spouse are insured, children are considered dependents of the employee only.
- If both employee and spouse are employees, both must apply as employees, and only one insured employee may elect life insurance on dependent children.
- Employees under age 60 may be eligible for waiver of premium if totally disabled.
- An Accelerated Death Benefit is included for insured employees.
- Life insurance benefits, including Waiver of Premium, will not be available for a loss which is caused by suicide or attempted suicide within one year from the effective date of the Voluntary Life benefit.
- The **Guarantee Issue** guidelines are outlined below. The participation requirement is 25% of all eligible employees with a 6 life minimum. If employee participation requirements are not achieved, all employee and spouse applications will be subject to satisfactory evidence of insurability. A spouse application does not count toward participation requirements.
- **Annual Enrollment**
  Up to $10,000 of additional coverage will be available without evidence of insurability if all of the following criteria are met:
  - At least 25% participation at initial enrollment
  - Up to the group's guarantee issue amount
- Available to employees and/or spouses who are currently enrolled for voluntary life coverage.

Eligible Employees	Guarantee Issue Amount
100+	$100,000 Employee

Employee & Spouse	Guarantee Issue Amount
Age 60 – 69	$20,000
Age 70+	Fully Underwritten -
Spouse up to age 70	$20,000

Voluntary Life Insurance

The competitive monthly premium, per $10,000 of coverage, for employee and spouse are shown below. An insured's premium will increase when he advances to the next age band.

Sample Monthly Premium for a $10,000 benefit

Age	Rate
Under 30	$ 1.00
30 – 34	1.00
35 – 39	1.50
40 – 44	2.40
45 – 49	3.50
50 – 54	5.90
55 – 59	10.20
60 – 64	16.00
65 – 69	25.10
70 – 74	40.10
75 and over	71.00

Monthly Dependent Life Insurance Rate

- $5,000 benefit - $1.00 per family unit
- $10,000 benefit - $2.00 per family unit

NOTE: Voluntary Life is not available in all states. Policy provisions may vary by state. Please contact your Marketing Representative for availability in your state.

Voluntary AD&D Insurance

Voluntary Accidental Death & Dismemberment insurance provides 24-hour protection in the event of accidental injury anywhere in the world, on or off the job, on business, on vacation, at home.

The Individual Plan: The employee can select up to $500,000 in $10,000 increments. This coverage is guarantee issue (no medical questions will be asked).

The Family Plan: If an employee wishes to cover themselves and their spouse and/or dependent children they should elect the Family Plan. The Family Plan provides the spouse with a benefit equal to 50% of the employee's benefit, and dependent children are covered for 10% of the employee's benefit.

NOTE: If the employee and spouse work for the same employer, dependent children will be covered by only one Family Plan.

Voluntary AD&D benefits reduce to 65% of the original benefit at age 70, to 45% at age 75, to 30% at age 80, and to 15% of the original benefit at age 85.

Voluntary AD&D Features

Seat Belt Benefit: Pays an additional benefit equal to the employee benefit (up to $25,000) if an insured employee dies as the result of a covered accident which occurs while the insured was driving or riding in an automobile driven by a licensed driver who was not intoxicated, under the influence of a controlled substance or impaired. The automobile must be equipped with seat belts, and the seat belts must have been in actual use and properly fastened at the time of the accident. The position of the seat belt must be certified in the official accident report or by the investigating officer. If an official police report certifying that the seat belt was being properly worn, is not available at the time the claim is submitted, the benefit amount will be $1,000.

Air Bag Benefit: An additional benefit amount equal to 5% of the Principal Sum will be payable if the insured dies while driving or riding in an automobile, provided that the insured was positioned in a seat equipped with a factory-installed air bag. The insured must have been properly strapped in the seat belt when the air bag inflated, and the air bag inflated properly upon impact. The maximum benefit payable is $5,000. If it is unclear whether the seat belt was being properly used and the air bag inflated properly, the benefit will be $1,000.

Repatriation Benefit: If an insured employee dies as a result of a covered accident at least 75 miles from his principal residence, up to $5,000 will be paid for the preparation and transportation of the insured employee's body. (Not available in all states)

Education Benefit: If the Principal Sum under the AD&D Benefit is payable for the employee's loss of life, each insured child who qualifies will receive reimbursement for incurred educational expenses in a school of higher education beyond the 12th grade. The maximum education benefit is equal to the lesser of the employee benefit amount or $12,000 and will be payable in four equal installments. A benefit of $1,000 is payable for children in elementary or high school. (Not available in all states)

Common Disaster Benefit: If the employee and spouse both die within 90 days of the date of, and as a result of the same accident, the spouse's benefit will be increased to 100% of the employee's benefit.

NOTE: Voluntary AD&D is not available in all states. Policy provisions may vary by state. Please contact your Marketing Representative for availability in your state.

Voluntary AD&D Insurance

Individual Plan Monthly Cost: $.05 per $1,000 of coverage.
Family Plan Monthly Cost: $.08 per $1,000 of the employee's amount of coverage.

Benefits are payable, provided:

- The loss occurs with in 365 days of the accident;
- The loss is the direct and sole result of the accident;
- The loss is independent of all other causes.

The amount paid will be as stated below, but will not exceed the Principal Sum stated in the application.

Loss of Life	Full Benefit Amount
Loss of two or more members*	Full Benefit Amount
Loss of one member*	One-Half Benefit Amount
Loss of thumb and index finger of same hand	One Quarter Benefit Amount

*Member means hand, foot, sight, speech or hearing.

Limitations (subject to state variations)

We will not pay any benefit for any Loss that, directly or indirectly, results in any way from or is contributed to by:

- any disease or infirmity of mind or body, and any medical or surgical treatment thereof; or
- any infection, except a pus-forming infection of an accidental cut or wound: or
- suicide or attempted suicide, while sane or insane; or
- any intentionally self-inflicted Accident; or
- war, declared or undeclared, whether or not the Insured is a member of any armed forces;
- travel or flight in an aircraft while a member of the crew, or while engaged in the operation of the aircraft, or giving or receiving training or instruction in such aircraft; or
- commission of, participation in, or an attempt to commit an assault or felony; or
- being under the influence of any narcotic, hallucinogen, barbiturate, amphetamine, gas or fumes, poison or any other controlled substance as defined in Title II of the comprehensive Drug Abuse Prevention and Control Act of 1970, as now or hereafter amended, unless as prescribed by the Insured's licensed physician and used in the manner prescribed. Conviction is not necessary for a determination of being under the influence; or
- intoxication as defined by the laws of the jurisdiction in which the accident occurred. Conviction is not necessary for a determination of being intoxicated; or
- active participation in a riot. "Riot" means all forms of public violence, disorder, or disturbance of the public peace, by three or more persons assembled together, whether with or without a common intent and whether or not damage to person or property or unlawful act is the intent or the consequence of such disorder.

NOTE: Voluntary AD&D is not available in all states. Policy provisions may vary by state. Please contact your Marketing Representative for availability in your state.

Passed 11/16/04

PAPER, ALLIED-INDUSTRIAL, CHEMICAL and ENERGY WORKERS INTL. UNION
PACE LOCAL 2-786
P. O. Box 9634
Edge Moor, DE 19809

Mark A. Schilling, President
Thomas M. Campbell, Vice President
Tera Taylor, Secretary
Darren DiDonato, Treasurer

UNION ONE TIME OFFER – 11/16/04*

A. The Union agrees to accept all terms of the 2005 Beneflex Plan, as previously announced to the Union and its Membership, and, hereby withdraws the Health Care Proposal given to Management on 11/8/04. The Union agrees that these announced changes, which will remain in effect for calendar year 2005, may take effect on 1/1/05 even if bargaining for a successor labor agreement is continuing.

B. The Company agrees to withdraw its proposed changes to Article IX paragraph 3 of the Collective Bargaining Agreement.

*This proposal expires effective 6:00 p.m. on 11/16/04. Should DuPont not accept this proposal within the time frame set forth above, it shall be considered withdrawn, and the Union's alternate November 16, 2004 proposal shall remain the sole and exclusive pending Union proposal on this issue.

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PAPER, ALLIED-INDUSTRIAL, CHEMICAL and ENERGY WORKERS INTL. UNION
PACE LOCAL 2-786
P. O. Box 9634
Edge Moor, DE 19809

Mark A. Schilling, President
Thomas M. Campbell, Vice President
Tera Taylor, Secretary
Darren DiDonato, Treasurer

UNION PROPOSAL MODIFICATION – 11/16/04

The Company will offer to all bargaining unit employees the Blue Cross and Blue Shield of Delaware the Exclusive Provider Organization Plan with the attached vision and dental riders and will also provide the attached Life and Accidental Death and Dismemberment policy. Bargaining unit members will be responsible for the same monthly costs that the employee would assume pursuant to the current Beneflex cost savings arrangement.. If during the course of this agreement, the premium costs of the plan increases by 10% or more than the concurrent cost increases (COBRA rate) for the Company's Beneflex program, either party may reopen this agreement solely for purposes of determining whether to offer Beneflex coverage in lieu of this plan or whether an adjustment to the cost sharing premium costs is necessary. This proposal also includes the BC/BS Flexible Spending Accounts for Dependent Care and Healthcare.

The Company's vacation buy back and financial planning programs contained in the Beneflex shall be offered to all bargaining unit members during the term of this agreement.

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March 21, 2005

Via E-mail

Mark Schilling
President
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2708 Chinchilla Drive
Wilmington, DE 19810

Via Fax

James L. Briggs
P.A.C.E. International Representative
P.A.C.E. International Union
Region 1
1069 Upper Mountain Road
Lewistown, NY 14092

Re: DuPont/Edge Moor - 2004-2005 Collective Bargaining Negotiations

Dear Messrs. Schilling & Briggs:

At the parties' negotiating session of Friday, March 11, 2005, the Union stated that it intended to ask its membership for a ratification vote on the Plant's then-current set of contract proposals (presented to you on March 10, 2005) as those proposals were to be modified by the Union. Specifically, you stated that the Union intended to submit to its members the Plant's proposals with two changes made unilaterally by the Union: (1) the Union would substitute the expired Agreement's language of Section 3, Article IX for the Plant's proposal concerning Beneflex (Item No. 4 in the Plant's March 10 set of proposals); and, (2) the Union would omit the Plant's proposal that the Union withdraw and the parties resolve the Union's ULP Charge (Case No. 4-CA-33620) pending against the Plant concerning the Beneflex changes implemented January 1, 2005 (Item No. 9 in the Plant's March 10 set of proposal).

First, as a matter of law, the Union cannot revise unilaterally the Plant's proposals, then "accept" those revised proposals and claim that a binding Collective Bargaining Agreement exists.

Second, in light of both parties' desire to bring these protracted negotiations to a mutually satisfactory close, and given the Union's scheduling of a contract ratification vote for March 31 and April 1, the Plant now offers a second set of counterproposals to the Union's January 28, 2005 "Package of Proposals." This second set of counterproposals is attached hereto and is offered now because of the upcoming ratification vote.

As you requested, the Plant has removed both its proposal concerning Beneflex (Item No. 4) and its proposal that the Union withdraw its ULP Charge (Item No. 9). In place of its prior Beneflex proposal, the Plant has agreed to substitute the expired Agreement's Section 3 of Article IX. It is the Plant's understanding that ratification of a contract including this Beneflex language will be an acceptance of the 2005 Beneflex changes, at least upon the effective date of the new Collective Bargaining Agreement, and of Beneflex's management rights clause permitting the Company to make unilateral changes to Beneflex, at least during the term of the Agreement.

Additionally, as we discussed in our bargaining session of March 11, the enclosed proposals now explicitly include the Plant's proposal on Holiday Pay (dated July 20, 2004), with which the Union had already agreed in its January 28, 2005 "Package of Proposals."

If the Union wishes to submit a set of proposals to its membership for ratification vote, it is the Plant's position that this vote should be held on the attached, revised set of Plant proposals.

Third, the Plant wishes to emphasize that the parties have not yet reached impasse in these negotiations. Indeed, the Plant is willing to continue to meet and bargain in good faith toward reaching a new Collective Bargaining Agreement. Nevertheless, the Plant has offered this revised set of counterproposals in response to the Union's scheduling of a ratification vote, and due to the Plant's desire to resolve these negotiations and reach an Agreement. The enclosed set of counterproposals will remain open through April 1, 2005. If they are not approved by the Union membership at the ratification vote, the Plant, of course, reserves the right to withdraw and revise these proposals.

Fourth, the Plant urges the Union's negotiating committee to recommend to the membership that the enclosed proposals be approved and a new contract ratified.

Finally, the parties' next bargaining session had been scheduled for Thursday, March 24, 2005. In light of the Union's announced intention to conduct a ratification vote on March 31 and April 1, we believe that there is little reason to meet and assume the March 24 bargaining session will not take place.

Very truly yours,

Denise M. Keyser

DMK/kmr
cc: Kathleen Hostetler, Esquire

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Medical, including any increases (or decreases) in premiums, changes to cost sharing components, as well as the addition of new plan options.

For example, in 1998, Respondent added a new financial planning option to the existing Beneflex Plan (Stipulated Facts, ¶ 22) as well as increasing medical, dental, and vision premiums. These plan changes were implemented at all of DuPont's U.S. sites, and are implemented on January 1 of each year. Thus, the alleged "unilateral" changes at issue took place across the country – not just Louisville. Thus, for eight years, the Employer made annual unilateral changes to Beneflex, including premium increases for Beneflex Medical. The following annual chart summarizes the changes that were made each year:

Year	Summary of Changes
1996	➢ Changes to pharmacy benefit, including mail service, and discounts for generic drugs ➢ Implementation of a new financial planning option (AycoAdvi$or) ➢ Increase in premiums for dependant life insurance ➢ Increase in premiums for vision coverage; enhancement of Vision Care Plan benefits via discounts available from network providers ➢ Increase in premiums for Dental Option A ➢ Changes to EAP (employee assistance plan) ➢ Changes to Targeted Nutrition Counseling (Stipulated Facts, ¶ 5; Jt. Ex. 6).
1997	➢ Increase in premiums for medical coverage ➢ Changes in rules for spousal medical coverage ➢ Decrease in premiums for vision coverage ➢ Increase in premiums for Dental Option A ➢ Changes to EAP (employee assistance plan) (Stipulated Facts, ¶ 17).

Year	Summary of Changes
1998	➢ Increase in premiums for medical coverage ➢ Changes to coverage for non-network mental health services ➢ Changes in rules regarding spousal medical coverage ➢ Increase in premiums for Dental Option A ➢ Increase in premiums for vision coverage ➢ New Financial Planning Option implemented (Option D) (Stipulated Facts, ¶ 22; Jt. Ex. 10).
1999	➢ Increase in premiums for medical coverage ➢ Reduction in deductibles for medical care Options A and B ➢ Modification to prescription drug benefits and coverage, including new coverage for contraceptives ➢ Changes in beneficiary payment methods for various life insurances and accidental death benefits ➢ Increase in premiums for Dental Option A ➢ Changes in dental claim review procedures ➢ Changes in rules regarding spousal coverage ➢ Increase in premiums for life insurance ➢ Increase in premiums for dependant life insurance ➢ Decrease in premiums for vision coverage (Stipulated Facts, ¶ 26; Jt. Exs. 12, 13).
2000	➢ Changes in design and administration of Beneflex life insurance plans ➢ Reduction in most premiums for Beneflex life insurance plans ➢ Changes in prescription drug co-payments ➢ Increase in premiums for Beneflex Medical Options A, B, L and P ➢ Changes in rules regarding spousal medical coverage ➢ Decrease in premiums for vision coverage ➢ Enhancements to Vision Care Plan coverage (increase in frame allowances and full coverage for prescription lens tints) (Stipulated Facts, ¶ 28; Jt. Exs. 14, 15).

Year	Summary of Changes
2001	➢ Increase in premiums for Beneflex Medical options A, B, L and P ➢ Changes in premiums for life insurance ➢ Decrease in premiums for accidental death insurance ➢ Decrease in premiums for dependant life insurance ➢ Changes in rules regarding spousal coverage ➢ Increase in amount of life insurance which employees could purchase (nine options) ➢ Increase in amount of life insurance available for dependents (ten options) ➢ Changes to life insurance plan, adding portability and accelerated benefits ➢ Changes to vision coverage ➢ Changes to dependant eligibility definitions ➢ Changes to Dependant Care Spending Accounts ➢ Enhancement of medical preventive tests and immunizations (except for HMO options) ➢ Changes to Financial Planning Options ➢ Addition of Direct Deposit to Flexible Spending Account Plans (Stipulated Facts, ¶ 33; Jt. Exs. 16, 21)
2002	➢ Increase in premiums for Beneflex Medical Options B, L and P ➢ Changes in rules regarding spousal medical coverage ➢ Increase in maximum contributions to Health Care Flexible Spending Accounts ➢ Elimination of Option A from Beneflex Medical Plan ➢ Increase in office visit co-pays under Options L and P for Beneflex Medical Plan ➢ Increase in Hospital Admission co-pays for Option L for Beneflex Medical Plan ➢ Changes to deductibles for medical coverage ➢ Changes to Stop Loss Amounts for all medical care coverage ➢ Addition of Stop Loss Protection for prescription drugs ➢ Changes in coinsurance and co-pays for prescription drugs ➢ Decrease in premiums for Vision Care Plan ➢ Changes to coverage for polycarbonate lenses under Vision Care Plan ➢ Changes to Financial Planning benefit (Stipulated Facts, ¶ 42; Jt. Exs. 27, 28)

Year	Summary of Changes
2003	➢ Increase in premiums for medical coverage ➢ Separating employee and retiree plan costs for purposes of setting premium increases for medical coverage ➢ Implementing new cost sharing approach for employees, retirees and survivors ➢ Introducing a new Medical Care Option U for Beneflex Medical Plan ➢ Elimination of Option L for Beneflex Medical Plan ➢ Implementation of Medical Decision support (Stipulated Facts, ¶ 55; Jt. Exs. 35, 38)
2004	➢ Increase in premiums for medical care coverage ➢ Addition of Beneflex Legal Services Plan ➢ Implementation of new dental plan feature (MetLife preferred Dentist provider) ➢ Changes in definitions for dependant coverage ➢ Elimination of one option to Beneflex Financial Planning Plan ➢ Changes to list of Qualifying Life Events ➢ Changes to Health Care Spending Account Plan (adding reimbursement for non-prescription drugs and vitamins) ➢ Changes to benefits provided for infertility treatment under Beneflex Medical Plan ➢ Changes to Mental Health/Chemical Dependency Benefits (Stipulated Facts, ¶ 62; Jt. Exs. 43, 46)
2005	➢ Increase in premiums for medical care coverage ➢ Change to the prescription drug benefit ➢ New coverage levels for medical, dental, vision ➢ Dental Option A premiums adjusted for new coverage levels ➢ Financial Planning, premium increase of less than $1/month ➢ Redesigned the Catastrophic Medical Option in the HOPPO with optional HAS (Stipulated Facts, ¶ 66; Jt. Exs. 47, 50)

Several points are worth noting. First, the changes were never a surprise to the employees or the Union. Rather, each fall, employees went through an annual enrollment period at which point they could elect any benefit changes that might be appropriate for their personal or family situation (Stipulated Facts, ¶ 6; Tr. 27-28). Immediately prior to that enrollment period, DuPont and the Union would meet to review the upcoming changes typically published in a document called "Plain Talk" that summarized the upcoming benefit changes (Stipulated Facts, ¶14, 16, 21, 25, 27, 29,

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued September 19, 2011 Decided June 8, 2012

No. 10-1300

E.I. DU PONT DE NEMOURS AND COMPANY,
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD,
RESPONDENT

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION,
INTERVENOR

Consolidated with 10-1301, 10-1353, 10-1355

On Petitions for Review and Cross-Applications for Enforcement
of Orders of the National Labor Relations Board

Steven W. Suflas, argued the cause for petitioner. With him on the briefs were *Denise M. Keyser*, *Mark L. Keenan*, and *Brennan W. Bolt*. *Donna D. Page* entered an appearance.

MacKenzie Fillow, Attorney, National Labor Relations Board, argued the cause for respondent. With her on the brief

were *John H. Ferguson*, Associate General Counsel, *Linda Dreeben*, Deputy Associate General Counsel, and *Robert J. Englehart*, Supervisory Attorney. *Daniel A. Blitz*, Attorney, entered an appearance.

Matthew J. Ginsburg, argued the cause for intervenor. On the brief were *Richard J. Brean*, *Daniel M. Kovalik*, and *James B. Coppess*. *Mariana L. Padias* entered an appearance.

Before: GINSBURG,[*] *Circuit Judge*, and EDWARDS and RANDOLPH, *Senior Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* GINSBURG.

Opinion concurring in part and concurring in the judgment filed by *Senior Circuit Judge* RANDOLPH.

GINSBURG, *Circuit Judge*: The National Labor Relations Board held E.I. Du Pont de Nemours & Co. engaged in an unfair labor practice by unilaterally implementing changes to its employee benefits program while it was between collective bargaining agreements with two local unions. Because the Board departed, without giving a reasoned justification, from its precedent allowing an employer unilaterally to change wages, hours, or working conditions when doing so is in keeping with the employer's past practice, we grant Du Pont's petitions for review of the Board's order and deny the Board's cross-applications for enforcement.

[*] As of the date the opinion was published, Judge Ginsburg had taken senior status.

I. Background

Du Pont offers its employees a package of benefits it calls Beneflex, of which the Beneflex Medical component has an open enrollment period each Autumn. The plan documents for Beneflex and for Beneflex Medical contain the following reservation of rights clause:

> The Company reserves the sole right to change or discontinue this Plan in its discretion provided, however, that any change in price or level of coverage shall be announced at the time of annual enrollment and shall not be changed during a Plan Year unless coverage provided by an independent, third-party provider is significantly curtailed or decreased during the Plan Year.

Du Pont has made changes to Beneflex at the time of enrollment each year since at least 1996. Changes to the program have included increases in the premiums for medical, life, vision, and dental insurance, changes in coverage, and the addition and elimination of plan options. These changes to Beneflex applied to employees at all Du Pont facilities, to union and non-union employees alike.

Du Pont had collective bargaining agreements (CBAs) with the local unions at the Company's production facilities in Louisville, Kentucky and Edgemoor, Delaware. Each CBA provided for employees to participate in Beneflex "subject to all terms and conditions" of the plan. The Beneflex plan documents, in turn, contained the reservation of rights clause. Until the CBAs at the two locations expired in 2002 and 2004 respectively, Du Pont had made annual changes to Beneflex without bargaining and without objection from the unions.

When the CBAs expired, Du Pont and the unions were negotiating successor labor contracts but had not reached an agreement at either facility. Du Pont then implemented changes to Beneflex in anticipation of the annual enrollment period, as it had done in previous years.

The Board held Du Pont violated Sections 8(a)(1) and 8(a)(5) of the National Labor Relations Act by making unilateral changes to Beneflex during ongoing negotiations with the unions. It found Du Pont had never before made changes to Beneflex between the expiration of one and the negotiation of another CBA, and therefore had not established a past practice justifying its unilateral changes to Beneflex during such a hiatus. Du Pont petitioned for review of the Order and the Board cross-applied for enforcement.

II. Analysis

We will uphold a decision of the Board unless it relied upon findings that are not supported by substantial evidence, failed to apply the proper legal standard, or departed from its precedent without providing a reasoned justification for doing so. *S & F Mkt. St. Healthcare LLC v. NLRB*, 570 F.3d 354, 358 (D.C. Cir. 2009). Section 8(a)(5) of the Act makes it an unfair labor practice for an employer to "refuse to bargain collectively with the representatives of his employees," 29 U.S.C. § 158(a)(5). An "employer's unilateral change in conditions of employment under negotiation is ... a violation of § 8(a)(5), for it is a circumvention of the duty to negotiate which frustrates the objectives of § 8(a)(5) much as does a flat refusal" to bargain. *NLRB v. Katz*, 369 U.S. 736, 743 (1962); *see Litton Fin. Printing Div. v. NLRB*, 501 U.S. 190, 198 (1991) ("it is difficult to bargain if, during negotiations, an

employer is free to alter the very terms and conditions that are the subject of those negotiations").

Under *Katz*, an employer unilaterally may implement changes "in line with [its] long-standing practice" because such changes amount to "a mere continuation of the status quo." 369 U.S. at 746; *see Courier-Journal*, 342 N.L.R.B. 1093, 1094 (2004) ("a unilateral change made pursuant to a longstanding practice is essentially a continuation of the status quo – not a violation of Section (a)(5)"). The purpose of prohibiting unilateral changes is not advanced by freezing in place the terms of employment when doing so disrupts the established practice for making changes. For this reason, an employer may lawfully change the terms of employment pursuant to such an established practice. There are, however, limits to the scope of the unilateral changes an employer may lawfully make during negotiations. More specifically, the Act does not permit a unilateral change "informed by a large measure of discretion" because "[t]here simply is no way in such [a] case ... to know whether or not there has been a substantial departure from past practice." *Katz*, 369 U.S. at 746.

The Board has previously approved extensive unilateral changes to health care benefit programs during a hiatus between CBAs when doing so was the established practice and the changes were within an acceptable degree of discretion. Thus, in *Post-Tribune Co.*, the Board held it was not unlawful for an employer unilaterally to increase employees' required contributions to health care premiums because the employer "had a consistent, established past practice of allocating health insurance premiums" between itself and its employees at a fixed ratio. 337 N.L.R.B. 1279, 1280 (2002). In *Courier-Journal*, the Board again approved

an increase in the health insurance premium to be paid by employees together with "a number of more far-reaching changes in the healthcare insurance benefits." 342 N.L.R.B. at 1093. There the expired CBA contained a clause providing the employer "reserves the right to modify or terminate any (or all) benefits ... at any time." *Id.* at 1093. After the CBA expired, the employer

> changed the amount of employee contributions to healthcare premiums; modified the framework for determining employee contribution levels; switched from an insurance 'plan year' starting on July 1 to a plan year starting on January 1; introduced separate vision and dental coverage plans; terminated the bonuses paid to employees who chose to waive the [employer's] healthcare insurance; and substituted two plans with [one insurer] for the plans the [employer] had previously offered with [other insurers].

Id. at 1099. Under the Board's precedent, therefore, even making broad changes to a benefits package can qualify as "a well-established past practice" that an employer may lawfully continue during a hiatus period. *Id*. at 1094.

Du Pont first argues the unilateral changes it made to Beneflex while negotiating with the unions were lawful because they were in line with the Company's established practice. The Board responds that the Company's practice arose pursuant to a management rights clause in the expired contracts, and therefore does not justify the unilateral changes Du Pont made after the expiration of those contracts. Du Pont also argues the changes were "covered by" the expired CBAs, a position the Board rejects on the ground the "covered by

contract" doctrine applies only if the contract is in effect when the employer makes a change.

We hold Du Pont, by making unilateral changes to Beneflex after the expiration of the CBAs, maintained the status quo expressed in the Company's past practice; those changes were therefore lawful under *Courier-Journal*. While the CBAs were in effect, Du Pont annually made unilateral changes to the package of benefits offered under Beneflex, including changes to the premiums the employees paid and to the benefits they received. Du Pont made the unilateral changes in dispute here after the CBAs had expired, but those changes were similar in scope to those it had made in prior years. Du Pont's discretion in making those changes was limited by the terms of the reservation of rights clause in the Beneflex plan documents, which permitted changes during — and only during — the annual enrollment period. Moreover, here as in *Courier-Journal*, the employer was obligated under its past practice to "treat the [union] employees exactly the same as [the non-union] employees," and so the employer's "discretion was limited" because it "did not have the freedom to grant [non-union] employees a benefit and deny same to [union] employees." 342 N.L.R.B. at 1094. Under the Board's precedent, therefore, Du Pont's making annual changes to Beneflex became a term and condition of employment the Company could lawfully continue during the annual enrollment period, irrespective of whether negotiations for successor contracts were then on-going.

The Board concluded Du Pont violated the Act because it failed to show "relevant past practice under the *Courier-Journal* cases - annual unilateral changes during hiatus periods." *E.I. Du Pont De Nemours, Louisville Works*, 355 N.L.R.B. No. 176, at 2 (Aug. 27, 2010). The Board

distinguished *Courier-Journal* on the ground that the employer there had "established a past practice of making [health care premium] changes both during periods when the contract was in effect and during hiatus periods" whereas Du Pont has made uncontested unilateral changes to Beneflex only while CBAs were in effect. *Id.* The Board emphasized the importance of this "factual distinction" as follows:

> Extending the *Courier-Journal* decisions to the situation presented here would conflict with settled law that a management-rights clause does not survive the expiration of the contract ... and does not constitute a term and condition of employment that the employer must continue following contract expiration.

Id.

Be that as it may, whether a management-rights clause survives the expiration of the contract is beside the point Du Pont is making. The Board has previously recognized that the lawfulness of a change in working conditions made after the CBA has expired depends not upon "whether a contractual waiver of the right to bargain survives the expiration of the contract" but rather upon whether the change "is grounded in past practice, and the continuance thereof." *Courier-Journal*, 342 N.L.R.B. at 1095. The Sixth Circuit captured the point precisely in *Beverly Health and Rehabilitation Services, Inc. v. NLRB*, 297 F.3d 468, 481 (2002): "[I]t is the actual past practice of unilateral activity under the management-rights clause of the CBA, and not the existence of the management-rights clause itself, that allows the employer's past practice of unilateral change to survive the termination of the contract." A subsequent Board decision unambiguously incorporates that teaching: "[T]he mere fact that the past practice was

developed under a now-expired contract does not gainsay the existence of the past practice." *Capitol Ford*, 343 N.L.R.B. 1058, 1058 n.3 (2004). Therefore, although the employer "cannot rely upon the management rights clause of that contract to justify unilateral action," the "past practice is not dependent on the continued existence of the [expired] collective-bargaining agreement." *Id.*

Because an employer may make unilateral changes insofar as doing so is but a continuation of its past practice, we see no reason it should matter whether that past practice first arose under a CBA that has since expired. Nor did the Board in *Capitol Ford*, where it upheld as lawful the employer's unilateral changes to employee compensation and paid holidays on the basis of an established practice even though the employer (and its predecessor) had never before made such changes when a CBA was not in force. 343 N.L.R.B. at 1058. The Board has not offered any reason whatsoever for thinking a unilateral action being taken during a hiatus period, although expressly deemed immaterial in *Capitol Ford*, should be dispositive in this case. Indeed, the Board did not so much as cite *Capitol Ford* or *Beverly Health & Rehabilitation Services, Inc.*, 346 N.L.R.B. 1319 (2006), where the Board again said that "without regard to whether the management-rights clause survived, the [employer] would be privileged to have made the unilateral changes at issue if [its] conduct was consistent with a pattern of frequent exercise of its right to make unilateral changes during the term of the contract," *id.* at 319 n.5. Although the Board had in several earlier cases held unilateral changes made pursuant to a past practice developed under an expired management-rights clause were unlawful, *see Beverly Health & Rehab. Servs.*, 335 N.L.R.B. 635, 636-37 (2001); *Guard Publ'g Co.*,

339 N.L.R.B. 353, 355-56 (2003), the Board clearly took a different position in its more recent decisions.

Accordingly, we hold the Board failed to give a reasoned justification for departing from its precedent. On remand, the Board must either conform to its precedent in *Capitol Ford* and in the 2006 iteration of *Beverly Health Services* or explain its return to the rule it followed in its earlier decisions. *See Manhattan Ctr. Studios, Inc. v. NLRB*, 452 F.3d 813, 816 (D.C. Cir. 2010) ("If we conclude that the Board misapplied or deviated from its precedent, we often remand with instructions to remedy the misapplication [or] deviation").[*]

III. Conclusion

For the reason set out above, Du Pont's petitions for review are granted and the Board's cross-applications for enforcement are denied. We remand the case to the Board for further proceedings consistent with this opinion.

So ordered.

[*] Because we grant the petitions for review on this ground, we do not reach Du Pont's alternative argument that the changes were "covered by" the expired CBAs.

RANDOLPH, *Senior Circuit Judge*, concurring in part and concurring in the judgment: When the National Labor Relations Board deviates from precedent without "offer[ing] any reason whatsoever for" doing so, Maj. Op. at 9, its action is "arbitrary and capricious" under § 706(2) of the Administrative Procedure Act, 5 U.S.C. § 706(2).[1] In such cases, the APA instructs reviewing courts to "hold unlawful *and set aside*" such "agency action." *Id*. (emphasis added). Despite this command, many of our NLRB decisions simply remand to the Board for further proceedings without requiring anything to be "set aside." *See, e.g.*, *Manhattan Ctr. Studios, Inc. v. NLRB*, 452 F.3d 813, 821 (D.C. Cir. 2006) (per curiam); *LeMoyne-Owen Coll. v. NLRB*, 357 F.3d 55, 61 (D.C. Cir. 2004); *Randell Warehouse*, 252 F.3d at 448-49; *Brusco Tug & Barge Co. v. NLRB*, 247 F.3d 273, 278 (D.C. Cir. 2001); *Lee Lumber & Bldg. Material Corp. v. NLRB*,

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[1] Although we did not decide whether the APA applies to judicial review of Board orders in *Diamond Walnut Growers, Inc. v. NLRB*, 113 F.3d 1259, 1266 (D.C. Cir. 1997) (en banc), later cases make clear that it does. *See, e.g.*, *NLRB v. Ky. River Cmty. Care, Inc.*, 532 U.S. 706, 712 (2001); *Allentown Mack Sales & Serv., Inc. v. NLRB*, 522 U.S. 359, 374 (1998); *Pirlott v. NLRB*, 522 F.3d 423, 432 (D.C. Cir. 2008); *W & M Props. of Conn., Inc. v. NLRB*, 514 F.3d 1341, 1348 (D.C. Cir. 2008); *Tasty Baking Co. v. NLRB*, 254 F.3d 114, 123 (D.C. Cir. 2001); *Randell Warehouse of Ariz., Inc. v. NLRB*, 252 F.3d 445, 449 (D.C. Cir. 2001); *Willamette Indus., Inc. v. NLRB*, 144 F.3d 877, 880 (D.C. Cir. 1998); *see also NLRB v. Curtin Matheson Scientific, Inc.*, 494 U.S. 775, 803-04 (1990) (Scalia, J., dissenting). This makes sense given that the APA applies to final agency actions "except to the extent that statutes preclude judicial review, or agency action is committed to agency discretion by law." 5 U.S.C. § 701(a)(1) & (2); *see also* ATTORNEY GENERAL'S MANUAL ON THE ADMINISTRATIVE PROCEDURE ACT 9 (1947) ("The Administrative Procedure Act applies, with certain exceptions [not relevant here], to *every agency and authority* of the Government." (emphasis added)); *id*. at 15, 98 (indicating that the APA applies to Board orders). There are no such limitations in the National Labor Relations Act.

117 F.3d 1454, 1460 (D.C. Cir. 1997) (per curiam); *Gen. Electric Co. v. NLRB*, 117 F.3d 627, 636 (D.C. Cir. 1997).

It is easy to see why we remand: to give the Board another chance to explain "apparent departures from precedent." *Gen. Electric*, 117 F.3d at 636. Less clear is why remand-only is a proper disposition in view of § 706(2)'s command that the court "set aside" the unlawful agency action. One explanation is that the court simply has not given any particular thought to this remedial wrinkle. There is some evidence to support this theory. In other failure-to-explain cases, we have vacated the Board's order in addition to remanding. *See, e.g.*, *Trump Plaza Assocs. v. NLRB*, No. 10-1412, 2012 WL 1654939, at *3, 7 (D.C. Cir. May 11, 2012); *Nathan Katz Realty, LLC v. NLRB*, 251 F.3d 981, 993 (D.C. Cir. 2001); *Bufco Corp. v. NLRB*, 147 F.3d 964, 971 (D.C. Cir. 1998); *Teamsters Local Union Nos. 822 & 592 v. NLRB*, 956 F.2d 317, 321 (D.C. Cir. 1992); *see also Pirlott*, 522 F.3d at 432. Yet there is no difference between these decisions and those in which the court seems to order only a remand. No opinion of our court has ever tried to reconcile the two lines of cases or even recognized the split.

I explained in *Comcast Corp. v. FCC*, 579 F.3d 1, 10 (D.C. Cir. 2009) (Randolph, J., concurring), and *Checkosky v. SEC*, 23 F.3d 452, 491 (D.C. Cir. 1994) (separate opinion of Randolph, J.), why courts holding an administrative rule or order unlawful must vacate the offending agency action in light of APA § 706(2). But orders of the National Labor Relations Board are somewhat unique. Unlike the orders of other administrative agencies, Board orders are not self-executing. "A party can . . . violate the order with impunity. To put teeth into one of its orders the Board must persuade a court of appeals to enforce the order – in effect, to issue an injunction commanding obedience . . .." *NLRB v. Thill, Inc.*, 980 F.2d 1137, 1142 (7th Cir. 1992); *see also Mitchellace, Inc. v. NLRB*, 90 F.3d 1150, 1159 (6th Cir.

1996); *NLRB v. Long Island Coll. Hosp.*, 20 F.3d 76, 82 (2d Cir. 1994); ROBERT A. GORMAN & MATTHEW W. FINKIN, BASIC TEXT ON LABOR LAW 14 (2d ed. 2004). One may therefore say that when a court grants a petition for review and denies the Board's cross-application for enforcement of its order (its "agency action"), there effectively is nothing left to set aside. There is no agency action that commands, dictates, or requires. Unlike a remand-only disposition in other areas of the law, no party is required to comply with the unlawful order while the Board reconsiders the matter on remand. The court's judgment enforcing the Board's order, and only that judgment, mandates obedience. In the limited universe of the National Labor Relations Act, therefore, the grant of a petition for review and the denial of a cross-application for enforcement may be viewed as the equivalent of setting aside the Board's order. Or one may say that in such cases the court's failure to vacate the Board's order constitutes harmless error.

Still, it is more tidy and certainly more in keeping with the APA to vacate unlawful orders when we remand cases to the Board. I therefore would vacate the Board's order before remanding.

E.I. Du Pont de Nemours, Louisville Works *and* Paper, Allied-Industrial, Chemical and Energy Workers International Union and its Local 5-2002

E.I. Du Pont de Nemours and Company and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW) and its Local 4-786. Cases 04–CA–033620, 09–CA–040777, and 09–CA–041634

August 26, 2016

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA, HIROZAWA, AND MCFERRAN

We consider these now-consolidated proceedings on remand from the United States Court of Appeals for the District of Columbia Circuit. As directed by the court, we review again the issue whether unilateral changes made by E.I. du Pont de Nemours, Louisville Works and E.I. du Pont de Nemours and Company (collectively, the Respondent) to unit employees' benefit plans after expiration of a collective-bargaining agreement violated Section 8(a)(5) and (1) of the Act. For the reasons set forth in this decision, we reaffirm the Board's prior findings of violations. In doing so, we reaffirm and apply Board precedent that, as the court acknowledged, held that discretionary unilateral changes ostensibly made pursuant to a past practice developed under an expired management-rights clause are unlawful. We likewise adhere to and apply Board precedent defining what constitutes a past practice that an employer must continue as status quo terms and conditions of employment in the absence of a collective-bargaining agreement. To the extent that certain Board decisions cited by the court[1] conflict with the precedent on which we rely, they are today overruled as ill-advised and unexplained departures from well-established complementary legal principles that are essential to effectuating the Act's fundamental purpose of protecting and promoting the practice of collective bargaining and the rights of employees to fully engage in that practice through their chosen representative.

[1] E.g., *Beverly Health & Rehabilitation Services*, 346 NLRB 1319 (2006); *Courier-Journal*, 342 NLRB 1093 (2004); *Capitol Ford*, 343 NLRB 1058 (2004).

I. PROCEDURAL BACKGROUND

On August 27, 2010, the National Labor Relations Board issued decisions and orders finding that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally changing the terms of the unit employees' Beneflex benefit plan at its facilities in Louisville, Kentucky and Edge Moor, Delaware, after the collective-bargaining agreement for each facility had expired.[2] The Respondent petitioned for review of the Board's Orders with the United States Court of Appeals for the District of Columbia Circuit, and the Board cross-petitioned for enforcement. On June 8, 2012, the court granted the Respondent's petitions for review, denied the Board's cross-petitions for enforcement, and remanded the cases to the Board for further proceedings consistent with the court's opinion. *E.I. du Pont de Nemours & Co. v. NLRB*, 682 F.3d 65 (D.C. Cir. 2012). By letter dated October 31, 2012, the Board notified the parties that it had accepted the remand and invited the parties to file statements of position. Thereafter, the Respondent, the Acting General Counsel, and the Charging Party each filed a position statement.

The Board has considered the decisions and the record in light of the court's remand and the parties' statements of position. For the reasons discussed below, we affirm the Board's prior findings that the Respondent violated Section 8(a)(5) and (1) in both cases.[3]

II. FACTS

The facts of these cases are set out in full in the Board's prior decisions. In brief, the Union has long represented bargaining units of production and maintenance employees at the Respondent's Louisville and Edge Moor facilities. In the 1990s, the Respondent created the company-wide Beneflex Flexible Benefits Plan (Beneflex Plan), a cafeteria-style compendium of numerous individual medical, dental, life insurance, and financial benefit plans, most of which were self-insured. The plan documents contained the following reservation of rights clause:

[2] *E.I. du Pont de Nemours, Louisville Works* (*DuPont-Louisville*), 355 NLRB 1084 (2010); *E.I. du Pont de Nemours and Company* (*DuPont-Edge Moor*), 355 NLRB 1096 (2010), enf. denied 682 F.3d 65 (D.C. Cir. 2012).

[3] The Respondent asserts that these cases are not properly before the Board because, at the time the Board accepted the court's remand in 2012, it did not have the necessary quorum to act. We reject this argument. The court's unchallenged order remanded the case to the Board; the Board's acceptance of the court's remand is nothing more than an administrative effectuation of the court's order.

We deny the Respondent's request for oral argument, as the record, exceptions, briefs and statements of position filed by the parties adequately present the issues.

> The Company reserves the sole right to change or discontinue this Plan in its discretion provided, however, that any change in price or level of coverage shall be announced at the time of annual enrollment and shall not be changed during a Plan Year unless coverage provided by an independent, third-party provider is significantly curtailed or decreased during the Plan Year.

Subsequently, the Union agreed in separate collective-bargaining negotiations that unit employees at the Louisville and Edge Moor facilities would be covered by the Beneflex Plan, including the reservation of rights provision.[4] Pursuant to the reservation of rights language, the Respondent announced widespread and varied annual changes to the Beneflex Plan in the fall of each year that the contracts were in effect, and it implemented those changes on the following January 1 without objection from the Union. Some of the plan changes recurred regularly. Other changes were made only once or intermittently. The Respondent did not contend, and the record does not show, that it followed any fixed criteria in making these changes.

Following the expiration of the parties' collective-bargaining agreements at Louisville in March 2002, and Edge Moor in May 2004, and while the parties were negotiating successor agreements, the Respondent continued to make numerous annual unilateral changes to the Beneflex Plan.[5] The Union objected and asserted that bargaining over the changes was required.[6] At Louisville, the Respondent refused to bargain over the changes, contending that it was not required to do so because it had a past practice of making annual changes when the collective-bargaining agreements had been in effect. At Edge Moor, some bargaining took place, but it is undisputed that the parties were not at impasse when the Respondent implemented the changes. The Respondent did not contend at either location that its post-expiration unilateral changes to Beneflex were compelled by exigent economic circumstances.[7]

III. THE PRIOR BOARD DECISIONS

In separate decisions for these companion cases, the Board found that the Respondent violated the Act by unilaterally changing the terms of the Beneflex Plan following the expiration of the applicable collective-bargaining agreements, when the parties were negotiating for successor collective-bargaining agreements and were not at impasse. The Board rejected the Respondent's defense that the post-expiration changes to the Beneflex Plan were privileged by past practice. It found that because the ostensible past practice was based on prior changes that were implemented pursuant to a management-rights clause in the contracts (i.e., the Beneflex reservation of rights provision), the Respondent's ability to continue making such changes did not survive the expiration of those contracts. *DuPont-Louisville*, 355 NLRB at 1084–1086; *DuPont-Edge Moor*, 355 NLRB at 1096. In both cases, the Board rejected the Respondent's argument that the changes were lawful under the *Courier-Journal* cases, 342 NLRB 1093 (2004) (*Courier-Journal I*), and 342 NLRB 1148 (2004) (*Courier-Journal II*),[8] in which the Board had accepted a "past practice" defense to alleged postexpiration unilateral changes to employees' health benefits. The Board distinguished *Courier-Journal* on the basis that the employer in those cases had established a past practice of making unilateral changes to employees' health care premiums both during the term of the contract *and* during hiatuses between contracts, indicating that the changes were not made exclusively pursuant to a contractual waiver. *DuPont-Edge Moor*, 355 NLRB at 1104–1105. The Board reasoned that extending the *Courier–Journal* decisions to the situation presented here, where the past practice consisted

[4] In *DuPont-Louisville*, the Beneflex Plan was incorporated into the parties' collective-bargaining agreements in 1994 and 1997; for *DuPont-Edge Moor,* it was incorporated in 1994 and 2000.

[5] At Louisville, post-expiration changes implemented on January 1, 2004 included increases in medical premiums, a new dental plan, and the addition of a legal services plan. *DuPont-Louisville*, 355 NLRB at 1093. Postexpiration changes implemented at both Louisville and Edge Moor on January 1, 2005, included increased prescription drug costs, penalties for purchasing "maintenance medication" at retail pharmacies rather than through a designated mail order service, elimination of the "Employee + One" coverage level for medical, dental, and vision benefits and replacement with "Employee + Child(ren)" and "Employee + Spouse" coverage levels, increase in some medical and dental premiums, changes in coverage levels for medical, dental, and vision options, increases in premiums for the financial planning program, and the addition of a new health savings account plan. *DuPont-Edge Moor*, 355 NLRB at 1102.

[6] The Respondent argues that, in *DuPont-Louisville*, the Union did not challenge the Respondent's 2003 changes to the Beneflex Plan. However, the evidence shows that, in the fall of 2002, when the Respondent met with the Union and presented a summary of the changes for the Beneflex Plan for the upcoming year, the Union informed the Respondent that any changes to the plan were subject to bargaining. And after the Respondent implemented the changes on January 1, 2003, the Union filed an unfair labor practice charge, alleging that the changes to the Beneflex Plan were unlawful. Although this charge was ultimately dismissed on procedural grounds, the Union subsequently filed charges in January 2004 that gave rise to the present complaint in *DuPont-Louisville*.

[7] See generally *RBE Electronics of S.D., Inc.,* 320 NLRB 80 (1995), and *Bottom Line Enterprises,* 302 NLRB 373 (1991), enfd. 15 F.3d 1087 (9th Cir. 1994); see also *Maple Grove Health Care Center*, 330 NLRB 775, 779 (2000) (finding that the employer failed to establish exigent economic circumstances that would justify its unilateral implementation of an increase in employees' health insurance premiums).

[8] Where appropriate, we collectively refer to the two cases as "*Courier-Journal*."

only of changes made during a contract term, "would conflict with settled law that a management-rights clause does not survive the expiration of the contract." *DuPont-Louisville*, 355 NLRB at 1085.

IV. THE DISTRICT OF COLUMBIA CIRCUIT'S OPINION

On review, the court concluded that the Board had departed without reasoned justification from Board precedent in finding the unilateral Beneflex changes to be unlawful. *E.I. du Pont de Nemours & Co. v. NLRB*, 682 F.3d at 68–70. The court accepted the proposition that during negotiations an employer may not unilaterally make discretionary changes to employees' terms and conditions of employment. In this case, however, the court found that the changes at issue were consistent with an established past practice because they were "similar in scope to those [the Respondent] had made in prior years," the Respondent's discretion in making the changes was sufficiently limited to the annual enrollment period and, like the employer in *Courier-Journal*, the Respondent's discretion was constrained by the requirement to treat represented and unrepresented employees alike. Id. at 68. For those reasons, the court held that the Respondent's across-the-board unilateral changes to the Beneflex Plan during the annual enrollment period were lawful under *Courier-Journal*. Id. at 68–69.

The court rejected the Board's reliance on the factual distinction drawn between the present cases and *Courier-Journal*: that (as explained), the Respondent's past changes to Beneflex were made only while the contractual reservation-of-rights clauses were in effect whereas in *Courier-Journal* the employer had made changes during both contract and hiatus periods. Unlike the Board, the court focused on the existence of the past practice itself, finding it immaterial that the practice had its origins in an expired management-rights clause. In support of that approach, the court pointed out that *Courier-Journal I* specifically stated that the legality of the post-expiration changes did not depend on "whether a contractual waiver of the right to bargain survives the expiration of the contract" but rather rests on whether the change "is grounded in past practice, and the continuance thereof." Id. at 69 (quoting *Courier-Journal,* 342 NLRB at 1095).[9]

The court concluded that the Board's reasoning was inconsistent with additional cases as well. The court cited *Capitol Ford,* 343 NLRB 1058 (2004), for example, where the Board found that a successor employer could continue a predecessor's past practice developed under an expired contract to justify changes during a hiatus period. Likewise, the court found that the Board's position was inconsistent with *Beverly Health & Rehabilitation Services, Inc.*, 346 NLRB 1319 (2006) (*Beverly 2006*), in which two panel members stated that "without regard to whether the management-rights clause survived, the [employer] would be privileged to have made the unilateral changes at issue if [its] conduct was consistent with a pattern of frequent exercise of its right to make unilateral changes during the term of the contract." Id. at 1319 fn. 5.[10]

Significantly, the court nevertheless acknowledged that in several earlier cases, including *Beverly Health & Rehabilitation Services*, 335 NLRB 635, 636–637 (2001) *(Beverly 2001)*, enfd. in relevant part 317 F.3d 316 (D.C. Cir. 2003), and *Register-Guard*, 339 NLRB 353, 355–356 (2003), the Board had held that "unilateral changes made pursuant to a past practice developed under an expired management-rights clause were unlawful." Despite these earlier decisions, the court observed, the Board "clearly took a different position in its more recent decisions." *E.I. du Pont de Nemours & Co. v. NLRB*, 682 F.3d at 70.[11]

Given the court's rejection of the Board's attempt to distinguish *Courier-Journal*, the court concluded that the Board had failed to provide a reasoned justification for departing from its more recent precedent. Recognizing, however, that the Board's view was consistent with its earlier precedent, the court remanded the present cases for further consideration. Specifically, the court directed the Board to "conform to its precedent in *Capitol Ford* and in the 2006 iteration of *Beverly Health and Rehabilitation Services* or explain its return to the rule it followed in its earlier decisions." Id.

V. DISCUSSION

Consistent with the court's remand instructions, we have examined the Board's decisions in *Courier-Journal*, *Capitol Ford*, and *Beverly 2006*, in light of the Act's fundamental policy to promote the practice of collective bargaining and longstanding precedent implementing that policy. For the reasons fully set forth below, we find that these considerations strongly support finding the

[9] The court also noted similar language in *Beverly Health and Rehabilitation Services, Inc. v. NLRB,* 297 F.3d 468, 481 (6th Cir. 2002), that "it is the actual past practice of unilateral activity under the management-rights clause of the CBA, and not the existence of the management-rights clause itself, that allows the employer's past practice of unilateral change to survive the termination of the contract." As discussed below in fn.17, the Sixth Circuit's holding in *Beverly Health* is flawed.

[10] Inasmuch as these Board Members found the changes at issue unlawful, this language was dicta.

[11] We note that the Board's "more recent decisions" made no attempt to address prior precedent, from which they deviated.

Section 8(a)(5) and (1) unilateral change violations in the present cases and overruling the cited cases to the extent they are irreconcilable with those considerations. We thus choose the second option identified by the court, and return to the rule followed in *Beverly 2001* and *Register-Guard*: that unilateral, postexpiration discretionary changes are unlawful, notwithstanding an expired management-rights clause or an ostensible past practice of discretionary change developed under that clause.

A fundamental purpose of the Act, set forth in Section 1, is to "encourage[e] the practice and procedure of collective bargaining . . . for the purpose of negotiating the terms and conditions of . . . employment." In furtherance of this statutory purpose, Section 8(d) of the Act imposes an obligation on parties in a collective-bargaining relationship to bargain collectively and in good faith with respect to wages, hours, and other terms and conditions of employment for represented employees. The employer's bargaining obligation is enforced through Section 8(a)(5) of the Act, which prohibits an employer from refusing to bargain or from bargaining in bad faith with its employees' designated representative. Section 8(a)(5) further prohibits, with very limited exception, an employer's unilateral changes to mandatory subjects of bargaining unless the employer has bargained to impasse with the union representing the employer's employees, or the union has clearly and unmistakably waived its statutory right to bargain about a particular subject.

As the Supreme Court long ago explained in its seminal decision on this point,

> [U]nilateral action by an employer without prior discussion with the union does amount to a refusal to negotiate about the affected conditions of employment under negotiation, and must of necessity obstruct bargaining, contrary to the congressional policy. It will often disclose an unwillingness to agree with the union. It will rarely be justified by any reason of substance.

NLRB v. Katz, 369 U.S. 736, 747 (1962).[12]

The *Katz* unilateral change doctrine was announced in a case involving an employer's unilateral changes during bargaining with a newly certified union for a first contract. The Supreme Court subsequently made clear that the doctrine "has been extended as well to cases in which an existing agreement has expired and negotiations on a new one have yet to be completed." *Litton Financial Printing Division v. NLRB*, 501 U.S. 190, 198 (1991).[13] Accordingly, "[u]nder *Katz,* terms and conditions continue in effect by operation of the NLRA. They are no longer agreed-upon terms; they are terms imposed by law, at least so far as there is no unilateral right to change them." Id. at 206. This is generally referred to as the obligation to maintain the status quo for mandatory subjects of bargaining. In the post-contract expiration context, the status quo consists of the terms and conditions of employment existing on the expiration date of the parties' collective-bargaining agreement.[14]

Thus, although terms and conditions of employment are frequently said to "survive contract expiration," they do so not by any lingering force of the contract, but in order to protect the continuing statutory bargaining duty that unilateral actions would circumvent. Any other approach would undermine collective bargaining by making it harder for the parties to reach agreement, while simultaneously undermining the union as the representative of the unit employees. For this reason, exceptions to the status quo doctrine are few, and are limited to mandatory bargaining subjects that are fundamentally creatures of contract and involve the surrender of a statutorily protected bargaining right that is important to the post-expiration bargaining process. These exceptions are limited to arbitration, no-strike/no-lockout, and management-rights waivers. As we discuss in Section A below, we find that the common rationale for excepting these subjects from those that must be maintained after a contract's expiration is not only consistent with the *Katz* unilateral change doctrine, it is essential to the effectuation of the statutory purpose underlying that doctrine.

It is also well established that the status quo that must be maintained after a contract's expiration includes extracontractual terms and conditions of employment that have become established by past practice. That is, "[a]n employer's practices, even if not required by a collective-bargaining agreement, which are regular and long-standing, rather than random or intermittent, become terms and conditions of unit employees' employment, which cannot be altered without offering their collective-bargaining representative notice and an opportunity to bargain over the proposed change. . . . A past practice

[12] See also *NLRB v. McClatchy Newspapers, Inc.*, 964 F.2d 1153, 1162 (D.C. Cir.1992) (Edwards, J., concurring) ("A unilateral change not only violates the plain requirement that the parties bargain over 'wages, hours, and other terms and conditions,' but also injures the process of collective bargaining itself. 'Such unilateral action minimizes the influence of organized bargaining. It interferes with the right of self-organization by emphasizing to the employees that there is no necessity for a collective bargaining agent.'" (quoting *May Dept. Stores Co. v. NLRB,* 326 U.S. 376, 385 (1945)).

[13] Citing, e.g., *Laborers Health and Welfare Trust Fund v. Advanced Lightweight Concrete Co.,* 484 U.S. 539, 544, fn. 6 (1988).

[14] In the initial bargaining context, that status quo consists of terms and conditions of employment in effect when the employer voluntarily recognizes the union as its employees' bargaining representative, or the terms and conditions existing on the date of the union's selection by a voting majority of employees in a Board election.

must occur with such regularity and frequency that employees could reasonably expect the 'practice' to continue or reoccur on a regular and consistent basis." *Sunoco, Inc.*, 349 NLRB 240, 244 (2007) (citations omitted).

However, as discussed in Section B below, *Katz* and statutory policy viewing unilateral employer actions as contrary to the general duty to bargain support a narrow definition of what constitutes a past practice that permits an employer's unilateral action in the absence of a bargaining agreement. The focus of that definition is on the degree of discretion that the employer purports to exercise.

As stated, we find that the Board's decisions in *Courier-Journal, Capitol Ford,* and *Beverly 2006*, are inconsistent with the principles we have examined.

A. The Precedent We Overrule Today is Irreconcilable with Established Law Limiting the Duration of Waivers Under a Contractual Management-Rights Clause

A management-rights clause is a contractual provision that authorizes an employer to act unilaterally, in its discretion, with respect to one or more mandatory subjects of bargaining. The Board has consistently held that a management-rights clause does not extend beyond the expiration of the collective-bargaining agreement embodying it, in the absence of evidence of the parties' contrary intentions. See, e.g., *Holiday Inn of Victorville*, 284 NLRB 916, 916–917 (1987).[15] This is so because, like arbitration and no-strike clauses, a management-rights clause involves a consensual surrender of a fundamental statutory bargaining right. As the Board has recently explained,

> It is true that a few contractually established terms and conditions of employment--arbitration provisions, no-strike clauses, and management-rights clauses--do *not* survive contract expiration, even though they are mandatory subjects of bargaining. In agreeing to each of these terms, however, parties have waived rights that they otherwise would enjoy in the interest of concluding a collective-bargaining agreement, and such waivers are presumed not to survive the contract.

Lincoln Lutheran of Racine, 362 NLRB No. 188, slip op. 4 (2015) (footnotes omitted).[16]

Beverly 2001, 335 NLRB at 636–637, is particularly instructive as to the integral connection between a management-rights clause and discretionary unilateral changes authorized by it. In that case, the Board adopted the judge's finding that the employer violated Section 8(a)(5) by implementing a number of unilateral changes in employees' working conditions following the expiration of the parties' collective-bargaining agreements. The Board reasoned that the management-rights clause in those agreements, which the employer cited as authority for making the changes, did not survive the contracts' expiration. Id. at 636. It also rejected the dissent's argument that even if the management-rights clause expired with the contract, the post-expiration unilateral changes were lawful because the work practices extant during the contract became terms and conditions of employment, and thus the employer had not changed the status quo. The Board explained that such a view "cannot be correct, for the essence of the management-rights clause is the union's waiver of its right to bargain. Once the clause expires, the waiver expires, and the overriding statutory obligation to bargain controls." Id. The Board further emphasized that "[b]ecause the waiver embodied in a management-rights clause lasts only until the contract expires, the status quo after contract expiration cannot include the right to make unilateral changes since such changes cannot be made in the absence of a waiver." Id. at 636–637 fn. 7. The Board observed that a contrary rule would make the expiration of the clause "meaningless wherever the employer had taken advantage of the waiver to make changes," and that defining the status quo that must be maintained following contract expiration as something so "fluid" necessarily "discourages, rather than promotes, collective bargaining," contrary to the aims of the Act. Id. at 637; see also *Register-Guard*, supra, 339 NLRB 353, 356 (because contractual reservation of managerial discretion did not survive expiration of the contract, absent evidence that the parties intended it to do so, the employer's previous implementation of sales incentive programs under such a contractual reservation did not create a past practice that privileged the institution of new sales commissions after the contract expired).[17]

[15] See also *Ryder/Ate, Inc*., 331 NLRB 889, 889 fn. 1 (2000), enfd. 22 Fed.Appx 3 (D.C. Cir. 2001); *University of Pittsburgh Medical Center*, 325 NLRB 443, 443 fn. 2 (1998), enfd. 182 F.3d 904 (3d Cir. 1999); *Ironton Publications*, 321 NLRB 1048, 1048 (1996); *Buck Creek Coal, Inc.,* 310 NLRB 1240, 1240 fn. 1 (1993).

[16] See also, *Southwestern Steel & Supply, Inc. v. NLRB*, 806 F.2d 1111, 1114 (D.C. Cir. 1986) (waiver of a statutorily-guaranteed right during the life of a contract is not a "clear and unmistakable" waiver of that right beyond the contract term, citing *Metropolitan Edison Co. v. NLRB,* 460 U.S. 693, 708–710 (1983)).

[17] The Board also noted that certain earlier cases, including *Shell Oil Co*., 149 NLRB 283, 286–287 (1964), and *Winn-Dixie Stores*, 224 NLRB 1418, 1432–1434 (1976), enfd. in part on other grounds 567 F.2d 1343 (5th Cir. 1978), "could be read to imply to the contrary, [but] those cases have been overruled sub silentio by . . . more recent cases" Id. at 636 fn. 6. Despite this, the Sixth Circuit mistakenly suggested a year after *Beverly 2001* that the *Shell Oil* line of cases remained extant Board law "standing for the proposition that if an employer has fre-

Beverly 2001 and *Register-Guard* make clear that when a union agrees to a management-rights clause, it has prospectively waived its right to object to discretionary unilateral changes covered by the clause only for the duration of the contract containing that clause. Accordingly, those discretionary changes cannot constitute a past practice that an employer could or should continue post-expiration without affording the union its full statutory bargaining rights. Nevertheless, in the *Courier-Journal* cases, a Board majority broke from this clear precedent without explanation.

In *Courier-Journal I*, 342 NLRB at 1094, the majority found that the employer's unilateral changes to employees' health insurance after expiration of a collective-bargaining agreement were lawful pursuant to an established past practice because, for 10 years, the employer had regularly made unilateral changes in the costs and benefits of the employees' health care program under waiver provisions in successive contracts and during prior hiatus periods, without protest from the union.[18] The contracts granted the employer the right to modify the health benefits, so long as any changes were made on the same basis as for nonrepresented employees. Id. at 1093. Without expressly referring to *Beverly 2001,* much less overruling that precedent, the majority essentially adopted the rationale of the dissent in that case, stating that "we do not pass on the legal issue of whether a contractual waiver of the right to bargain survives the expiration of the contract. Our decision is not grounded in waiver. It is grounded in past practice, and the continuance thereof." Id. at 1095. As a matter of past practice, the majority reasoned that the employer's discretion to make changes was limited by its obligation to treat unit and nonunit employees the same, but even if its discretion was not limited, the union's failure to object to past changes privileged the employer to continue making them under an established past practice, even after contract expiration.

As we discuss in the next section, the *Courier-Journal* "past practice" rationale for finding broad discretionary post-expiration unilateral changes lawful cannot be reconciled with the traditional and longstanding past practice doctrine. Therefore, despite the *Courier-Journal* majority's protestations to the contrary, the only arguable source of authority for continuing to exercise the right to make such changes would be based on waiver and the union's prior acquiescence. This approach is patently mistaken. See *Beverly 2001*, 335 NLRB at 636–637. During the contract period, any failure to object by the union was in accord with the parties' negotiated agreement and cannot be construed as consent to post-contractual unilateral changes. Regarding changes made during prior hiatus periods, the failure-to-object rationale is contrary to the well-established waiver principle that "a union's acquiescence in previous unilateral changes does not operate as a waiver of its right to bargain over such changes for all time." *Owens-Corning Fiberglass Corp*., 282 NLRB 609, 609 (1987). Thus, the union's acquiescence in the employer's unilateral changes to health benefits made during prior out-of-contract hiatus periods did not establish a waiver of its right to bargain over the employer's post-expiration changes that it did ultimately oppose.

We reject the *Courier-Journal* approach, however denominated, because it would clearly frustrate collective bargaining and undermine the union's bargaining representative status, in direct contradiction of the Act's policies, as articulated in *Katz* and *Litton*.[19] Such an approach would render the expiration of the management-rights clause meaningless wherever the employer had acted under its authority to make changes during the contract period. Indeed, an employer that has exercised broad discretion in making unilateral changes pursuant to a management-rights provision during the contract term would have little incentive to bargain and agree on such proposals if it retains this discretion after the contract expires.

In sum, we find that the common rationale of all of these cases cited by the District of Columbia Circuit and

quently engaged in a pattern of unilateral change under the management-rights clause during the term of the CBA, then such a pattern of unilateral change becomes a 'term and condition of employment,' and that a similar unilateral change after the termination of CBA is permissible to maintain the status quo." *Beverly Health and Rehabilitation Services v. NLRB*, 297 F.3d at 481 (6th Cir. 2002). Inasmuch as the *Beverly 2001* Board had expressly rejected this proposition and deemed supporting precedent to have been overruled in relevant part, the Sixth Circuit's discussion of *Shell Oil* is misplaced. See *E.I. du Pont*, 682 F.3d at 69, citing *Beverly Health*, 297 F.3d at 481. Our dissenting colleague contends that *Beverly 2001* overruled *Shell Oil* and *Winn-Dixie* only to the extent that they suggested management rights waivers survived contract expiration. We note in this regard that *Beverly 2001* specifically stated that "[b]ecause the waiver embodied in a management-rights clause lasts only until the contract expires, the status quo after contract expiration cannot include the right to make unilateral changes since such changes cannot be made in the absence of a waiver." 335 NLRB at 636 fn. 7, citing its fn. 6 reference to the sub silentio overruling of those cases. Insofar as necessary to eliminate any uncertainty about the current status of these earlier decisions, we expressly overrule the *Shell Oil* line of cases today.

[18] The Board's rationale was applied in *Courier-Journal II,* 342 NLRB 1148, involving the same respondent, which issued a few days later.

[19] The holding in *Capitol Ford*, that a successor employer could lawfully make unilateral changes consistent with those made by the predecessor employer during a post-expiration hiatus period, suffers from the same flaws as *Courier-Journal*. So, too, does the dicta in *Beverly Health 2006* cited by the court in its remand opinion in this case.

the Respondent cannot be reconciled either with fundamental Board law limiting broad discretionary employer actions under management-rights waivers to the duration of their source contracts, or to the requirement that post-expiration changes in mandatory terms and conditions of employment be subject to the full bargaining process required by the Act.

B. The Courier-Journal and Capitol Ford Decisions are Incompatible with Well-Established Past Practice Doctrine

The Board's past practice doctrine also flows from *Katz*. The Supreme Court there held that an employer's unilateral change involving a mandatory bargaining subject, pursuant to a practice established prior to the advent of the union, violated Section 8(a)(5). The Court rejected the employer's past practice defense to the unilateral implementation of merit wage increases despite the "the fact that the [ ] raises were in line with the company's long-standing practice of granting quarterly or semiannual merit reviews—in effect, were a mere continuation of the status quo." The Court reached its conclusion because "the raises [ ] in question were in no sense automatic, but were informed by a large measure of discretion." 369 U.S. at 746.

Since *Katz*, the Board and the courts have repeatedly held that employers may act unilaterally pursuant to an established practice *only* if the changes do not involve the exercise of significant managerial discretion. Promoting stability, this doctrine freezes the status quo to the greatest extent possible while allowing a narrow exception for situations where there is a history of predictable changes to a discrete term or condition of employment that would be expected to continue in a nondiscretionary, regular manner. In the latter circumstances, a so-called dynamic status quo exists in which adherence to the pattern of change is not only permitted, but required. For example, applying *Katz,* the Board held in *State Farm Mutual Auto Insurance Co.*, 195 NLRB 871, 890 (1972), that an employer did not violate Section 8(a)(5) by unilaterally granting newly represented employees cost-of-living wage increases inasmuch as they were "automatic increases [determined by Bureau of Labor Statistics data] to which the Company was committed by a longstanding program and which involved no independent action by the Company."[20]

By contrast, in *Oneita Knitting Mills, Inc.,* 205 NLRB 500 (1973), the Board held that an employer violated Section 8(a)(5) by unilaterally granting merit wage increases to represented employees, even though it had a past practice of granting such increases. The Board explained that if an employer has exercised, and continues to exercise, discretion in regard to the amount of an annual wage increase, it must first bargain with the union over the discretionary aspect. Id.[21]

In the decades since *Katz*, with the exception of management rights precedent we overrule here, the Board has narrowly interpreted when a past practice was sufficiently fixed as to timing and criteria—thereby limiting employer discretion—as to deem further changes to be a permissible continuation of the dynamic status quo. In most cases, an employer's past practice defense of unilateral action has been rejected because, as in the case of the wage increases at issue in *Katz* itself, they "were in no sense automatic, but were informed by a large measure of discretion." 369 U.S. at 746. For example, in *Eugene Iovine, Inc.*, 328 NLRB at 294–295 (1999), enfd. 1 Fed. Appx. 8 (2d Cir. 2001), the Board held that an employer's recurring unilateral reductions in employees' hours of work were discretionary and therefore required bargaining with a newly certified union: "there was no 'reasonable certainty' as to the timing and criteria for a reduction in employee hours; rather, the employer's discretion to decide whether to reduce employee hours 'appear[ed] to be unlimited.'" Accord *Adair Standish Corp.*, 292 NLRB 890, 890 fn. 1 (1989) (despite past practice of instituting economic layoffs, employer, because of newly certified union, could no longer continue unilaterally to exercise its discretion with respect to layoffs), enfd. in relevant part 912 F.2d 854 (6th Cir. 1990); see also *Aaron Brothers Co. v. NLRB*, 661 F.2d 750, 753 (9th Cir. 1981) (the "longstanding practice" exception suggested in *Katz* places a heavy burden on the employer to show an absence of employer discretion in determining the size or nature of a unilateral employment change).

Healthcare insurance benefits, like wages and hours of work, are a mandatory subject of collective bargaining and, as such, are subject to the same general statutory principles: an employer generally may not alter them without bargaining to agreement or to a good-faith impasse. *Mid-Continent Concrete*, 336 NLRB 258, 259 (2001), enfd. 308 F.3d 859 (8th Cir. 2002); *United Hospital Medical Center*, 317 NLRB 1279, 1281 (1995).

[20] See also *Kal-Die Casting Corp.*, 221 NLRB 1068, 1068 fn. 1 (1975) (finding that an employer did not violate the Act by unilaterally making "routine production and scheduling adjustments" because there was no evidence that those adjustments varied from the employer's established past practice of making similar adjustments, and the union did not request bargaining in any event).

[21] See also *State Farm Mutual Auto Insurance*, above, 195 NLRB at 890 (finding that the employer violated the Act by continuing its practice of unilaterally granting merit increases that were informed by a significant degree of discretion).

Compare *Luther Manor Nursing Home*, 270 NLRB 949, 959 (1984), affd. 772 F.2d 421 (8th Cir. 1985) (no violation of Section 8(a)(5) where, in accordance with past practice of automatic change, the employer paid one third of an insurance premium increase itself and required employees to pay the remaining two thirds) with *Dynatron/Bondo Corp.*, 323 NLRB 1263, 1265 (1997), enfd. in relevant part 176 F.3d 1310 (11th Cir. 1999) (increases to employee contributions were unlawful despite employer's established practice of passing on premium increases to employees in the 3 years before the union was certified, because the increases were not shown to be based on a "fixed percentage" of the total premium and the employer retained "total discretion" over what employees were required to contribute).[22]

Although most of the cases where the Board has considered an employer's past practice defense to a unilateral change in health benefits have involved changes during first contract bargaining with newly certified unions, the Board has also considered and rejected an employer's past practice defense where the parties had a preexisting bargaining relationship. In *Caterpillar Inc.,* 355 NLRB 521 (2010), enfd. mem. 2011 WL 2444757 (D.C. Cir. 2011), the Board found that an employer's unilateral implementation of a generic-first prescription drugs program violated Section 8(a)(5). The Board rejected the employer's contention that it had a longstanding practice of unilaterally implementing changes to its prescription drug program, finding that the employer failed to show any regularity and frequency with respect to the prior changes and that the employer's "series of disparate changes . . . [did] not establish a 'past practice' excusing bargaining over future changes." Id. at 523.

In the *Courier-Journal* decisions, where the majority purported to decide the cases exclusively on past practice grounds, the analysis veered sharply from the well-established precedent defining a past practice status quo. In *Courier-Journal I*, 342 NLRB 1093, the contracts granted the employer the right to modify the employees' health insurance coverage so long as any changes were made on the same basis as for unrepresented employees. For some 10 years, the employer regularly implemented changes to employees' health insurance coverage; these included increases in employee contributions towards insurance premiums, modifications to coverage, and changes in carriers. Id. at 1098. The changes were made unilaterally for both represented and unrepresented employees alike, and some changes were implemented during a hiatus period between collective-bargaining agreements. Following the expiration of the parties' most recent collective-bargaining agreements, the employer made even "more far reaching changes to the healthcare insurance benefit," including increases in employee contributions to health care premiums, modifications to the framework for setting employee contribution levels, introduction of new vision and dental coverage plans, termination of a bonus program, and a change in the insurance provider. Id. at 1099.

The *Courier-Journal* majority's conclusion that the employer's ability to make "extensive unilateral changes"[23] was sufficiently limited by the requirement that any changes for unit employees be the same as for unrepresented employees is contrary to the past practice doctrine developed in accord with *Katz*. Without explanation, *Courier-Journal* found that a recurring pattern of broad discretionary actions taken pursuant to an expired management-rights clause permitted unilateral action. The changes deemed lawful in *Courier-Journal* were unlike those made pursuant to a fixed formula in *Luther Manor*, supra, 270 NLRB 949. Instead, as in *Mid-Continent*, 336 NLRB at 268, *Dynatron/Bondo*, 323 NLRB at 1265, and *Maple Grove Health Care Center*, 330 NLRB at 780, the employer's previous changes in unit employees' health care costs and benefits were not based on reasonably certain criteria that limited the employer's discretion. Rather, the purported past practice effectively involved

[22] Compare also *Post-Tribune Co.*, 337 NLRB 1279, 1280 (2002)(employer lawfully unilaterally increased employees' required contributions to health care premiums because it had a consistent, established past practice of allocating health insurance premiums between itself and its employees at a fixed ratio); *House of the Good Samaritan*, 268 NLRB 236 (1983) (employer lawfully passed an insurance premium increase along to employees where the employer followed its written policy setting forth the maximum dollar amount it would pay toward employee health insurance); *A-V Corp.*, 209 NLRB 451, 452 (1974) (where the employer's "consistent practice with regard to increased insurance premium costs . . . had been to allocate a portion of such costs to its employees on a pro rata share basis," the employer's allocation of a later premium increase in the same manner represented a continuation of the past practice rather than a unilateral change), with *Maple Grove Health Care Center*, 330 NLRB 775, 780 (2000) (rejecting employer's argument that it had no obligation to bargain over a change in employees' insurance premiums because it had maintained the status quo by passing on a portion of the externally imposed insurance premium increase to employees; the purported status quo was insufficiently certain because the employer failed to show an established practice of requiring employees to pay a fixed percentage of the healthcare insurance premium); *Mid-Continent Concrete*, 336 NLRB at 268 (rejecting the employer's argument that it had no obligation to bargain when it changed insurance plans and benefits because it had a past practice of maintaining uniformity between the benefits of unit and nonunit employees); *Garrett Flexible Products, Inc.,* 276 NLRB 704 (1985) (employer violated Sec. 8(a)(5) by unilaterally increasing the health insurance premium paid by bargaining unit employees where the employer had exercised substantial discretion in allocating the increases between the employer and the employees).

[23] *E.I. du Pont*, 682 F.3d at 68.

limitless discretion in changes to the employees' health insurance benefits.

The *Courier-Journal* majority also found that the employer's discretion to change health benefits was limited because changes to unit members' benefits had to be the same as those for unrepresented employees. 342 NLRB at 1094. Yet because the employers were free to change and even entirely eliminate benefits to employees who are not represented by a union, there are no fixed criteria limiting that discretion. Such discretion does not establish a past practice permitting unilateral changes. See e.g., *Larry Geweke Ford*, 344 NLRB 628, 632 (2005) (the employer's history of providing the same health plan for all its employees on a company-wide basis did not exempt it from its bargaining obligation). As dissenting Member Liebman persuasively explained in *Courier-Journal I*, this constituted "no limitation at all":

> [T]he [r]espondent could do exactly as it pleased with regard to the [unrepresented employees'] coverage, and therefore, by extension, it could do the same for unit employees. If dealing with union-represented employees exactly as it would if they were not represented is a 'limitation' on the [r]espondent's discretion, it is one that most employers would be happy to accept.

342 NLRB at 1096–1097.

Paradoxically, the *Courier-Journal* decisions created a bargaining dichotomy in which an employer would have much broader latitude to make discretionary unilateral changes when negotiating for a successor bargaining agreement than would be permitted, as in *Katz*, when bargaining for an initial agreement. There is no rational basis for this dichotomy, and it cannot be reconciled with the Supreme Court's approval in *Litton* of the Board's position that "it is difficult to bargain if, during negotiations, an employer is free to alter the very terms and conditions that are the subject of those negotiations." 501 U.S. at 198. That position applies with equal force to initial and successor bargaining.

For all of the above reasons, we conclude that *Courier-Journal* cannot be reconciled with longstanding precedent defining a past practice that must be maintained as part of the status quo under the unilateral change doctrine. We therefore overrule it and other decisions to the extent that they depart from that precedent, including the holding that treating unit and nonunit employees alike when making otherwise broad discretionary changes constitutes a fixed criterion sufficient to establish a past practice status quo.[24]

[24] The Board's holding in *Capitol Ford* was likewise inconsistent with past practice principles, and must be overruled in relevant part. The Board there reasoned that the successor employer lawfully modified the unit employees' productivity bonus program, because the predecessor employer had made similar discretionary changes during the term of its contract with the union. As in *Courier-Journal*, there was no attempt to reconcile this result with the traditional definition of a cognizable past practice status quo, which emphasizes the absence of, or at least strict limitations on, the degree of an employer's discretion to act unilaterally.

VI. APPLICATION TO THIS CASE

During negotiations for successor collective-bargaining agreements at its Louisville and Edge Moor facilities, the Respondent unilaterally implemented numerous substantial changes to the Beneflex benefits of unit employees without bargaining to impasse. The changes varied widely from year to year, encompassing both changes to the price and content of benefits as well as the elimination and addition of plan options within benefit plans, including the elimination of entire categories of benefits. Those changes were limited in timing to the extent that they coincided with the annual open period for the Beneflex Plans.[25] But they were limited in substance only to the extent of the requirement that the same changes be made for nonunit employees, which, as discussed above, we find to be no meaningful limitation at all.

In addition, the Respondent's right to exercise broad discretion in unilaterally changing the benefit plans existed solely because the Union agreed that the Respondent could make changes during the term of the parties' collective-bargaining agreement pursuant to the reservation of rights clause in the Beneflex Plan documents.[26] Consistent with precedent we reaffirm today, overruling cases to the contrary, this provision did not survive the expiration of the collective-bargaining agreements—and neither did the employer's contractual right to make uni-

[25] The District of Columbia Circuit has itself expressed the view that fixed timing alone is "a characteristic found insufficient to create a term or condition of employment" under past practice doctrine. *Arc Bridges, Inc. v. NLRB*, 662 F.3d 1235, 1239 (D.C. Cir. 2011), citing *Daily News of Los Angeles v. NLRB,* 73 F.3d 406, 412 fn. 3 (D.C.Cir.1996).

[26] We reaffirm the prior Board's findings, for the reasons set forth in its initial decisions, that the reservation of rights clause in the Beneflex Plan documents is a management-rights clause. *DuPont-Louisville*, 355 NLRB at 1086, 1094; *DuPont-Edge Moor*, 355 NLRB at 1103–1104.

We also reaffirm the prior Board's findings, for the reasons set forth in its initial decisions, that the Respondent failed to show that its unilateral changes were privileged under *Stone Container Corp.,* 313 NLRB 336 (1993), or were "covered by" the expired collective-bargaining agreements. *DuPont-Louisville*, 355 NLRB at 1086 fn. 8; *DuPont-Edge Moor*, 355 NLRB at 1106–1108. In addition, we find that the *Stone Container* exception is inapplicable in this case because it applies only where the parties are negotiating for an initial collective-bargaining agreement and not to negotiations for successor contracts. *Connecticut Institute for the Blind, Inc., d/b/a Oak Hill*, 360 NLRB No. 55, slip op. at 52 (2014). Therefore, we find inapposite the Respondent's reliance on *Brannan Sand and Gravel*, 314 NLRB 282 (1994), and *Nabors Alaska Drilling, Inc*., 341 NLRB 610 (2004).

lateral changes permitted by it. Consequently, the Respondent's wide-ranging and varied changes, made with no cognizable fixed criteria, did not establish a status quo under our doctrine that the Respondent was permitted to continue post-expiration.

Further, the fact that the Union did not object to Beneflex changes during the term of the collective-bargaining agreements is of no consequence. For as long as the contractual management-rights clause remained in effect, these were permissible discretionary changes. But once the agreements expired, the Union's past silence surely did not constitute a waiver of its right to oppose similar changes. The Respondent moreover has failed to show that the changes it made to the Beneflex Plan after the contracts expired were made according to fixed criteria.[27] Instead, the evidence shows that they clearly fell outside the limited range of repeated changes made with little or no discretion that, with the exception of cases we overrule today, the Board has recognized as a statutory status quo that may be maintained in the absence of a collective-bargaining agreement.[28]

Following the expiration of the parties' collective-bargaining agreements, therefore, the Respondent had the statutory obligation to adhere to the terms and conditions of employment that existed on the expiration date at each facility until it bargained to agreement or reached a good faith impasse in overall bargaining for a new agreement. When the collective-bargaining agreements expired, the Beneflex Plan benefits in effect on the expiration dates became fixed as the status quo subject to this statutory duty to bargain.[29]

By unilaterally implementing further post-expiration changes in the absence of a bargaining impasse, the Respondent breached its obligation to maintain that status quo and thereby violated Section 8(a)(5) and (1) of the Act.

VII. RESPONSE TO DISSENT

Our dissenting colleague makes three primary contentions. First, he asserts that our decision is based on a new definition of what constitutes a change under the Supreme Court's decision in *Katz* and that this allegedly new definition cannot be reconciled with *Katz*, the Act, or what he deems to be fundamental common sense. Second, he contends that our decision is based on a narrative that falsely paints the *Courier-Journal* cases, rather than *Beverly 2001* and *Register-Guard*, as unexplained departures from long-established Board precedent. Third, he asserts that our decision today has no rational policy basis and that it will both ill serve collective-bargaining and undermine industrial peace. Obviously we disagree, and for good reason.

To begin, we believe that the District of Columbia Circuit was fully cognizant of *Katz* and its bearing here when it remanded this case with instructions that the Board should "conform to its precedent in *Capitol Ford* and in the 2006 iteration of *Beverly Health and Rehabilitation Services* or explain its return to the rule it followed in its earlier decisions [in *Beverly 2001* and *Register-Guard*]." 682 F.3d 65. These instructions leave open the issue whether those earlier Board decisions are in accord

[27] When an employer asserts a past practice as a defense to a charge that it has refused to bargain, the employer carries the burden of proving the existence of the past practice. See, e.g., *Caterpillar, Inc.,* 355 NLRB at 523; see also *Eugene Iovine, Inc.*, 328 NLRB at 294 fn. 2.

[28] The Respondent asserts that *The Finley Hospital*, 359 NLRB 156 (2012), supports its view that the post-expiration status quo included the Respondent's right to make annual changes to the Beneflex Plan. The Supreme Court's decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), rendered the Board's decision in *Finley Hospital* invalid. However, in *Finley Hospital*, 362 NLRB No. 102 (2015), reversed in part __ F.3d __, 2016 WL 3511487 (8th Cir. 2016), the Board affirmed the judge's finding that the employer violated Sec. 8(a)(5) by unilaterally discontinuing annual raises required under the collective-bargaining agreement when the agreement expired and essentially adopted its earlier rationale. Nevertheless, we find that *Finley Hospital* is inapposite; it did not involve the Board's past practice doctrine, nor did the employer in that case raise such a defense. In *Finley*, a contractual provision in the parties' collective-bargaining agreement stated in relevant part that "For the duration of this Agreement, the Hospital will adjust the pay of Nurses on his/her anniversary date. Such pay increases for Nurses not on probation, during the term of this Agreement, will be three (3) percent . . ." 362 NLRB No. 102, slip op. at 2. During the term of the contract, the employer had implemented wage increases pursuant to this provision that provided for annual increases in specified amounts. The Board found that the employer violated Sec. 8(a)(5) by unilaterally discontinuing the annual 3-percent pay raises provided in agreement after it expired. Id., slip op. at 3–5. The Board reasoned that employer had a duty to continue to pay the 3-percent pay increases following the contract's expiration consistent with its statutory duty to maintain the status quo. Unlike in this case, the wage increase provision in the contract in *Finley* was not a management-rights provision, but rather was a particular term and condition of employment—a discrete and clearly defined wage increase—that the employer was required to continue post-expiration. Such a defined wage increase is vastly different from the ad hoc discretionary changes in benefits that the Respondent here contends it is privileged to make as part of the purported status quo.

[29] The Respondent maintains that requiring it to maintain the Beneflex Plan as it existed on the contract's expiration dates "defeats any notion of status quo." On the contrary, it is well-settled Board law that the status quo for unit employees as of the expiration of the contract is whatever health coverage they had in effect at the expiration of the agreement. See *Remington Sheraton Anchorage*, 362 NLRB No. 123, slip op. at 5 (2015) (employer violated Sec. 8(a)(5) by instituting a new medical insurance plan for its employees, and by ceasing to make payments to the medical insurance carrier under the plan as provided for in the expired collective-bargaining agreement); *United Hospital Medical Center*, 317 NLRB 1279 (1995) (employer violated the Act when it made certain changes in health benefits during negotiations for a successor contract).

with *Katz* and the Act as a matter of law if the Board chose to overrule the more recent conflicting precedent.

Further, we cannot accept our dissenting colleague's assertion that when examining whether an employer's unilateral action constitutes a "change" under *Katz*, "the only relevant factual question is whether the employer's actions are similar in kind and degree to what the employer did in the past." Under the dissent's view, proof of a prolonged series of totally discretionary and varied changes in a particular term of employment, unfixed as to timing and criteria, would permit a continuation of this putative past practice until such time as the employer agreed in negotiations to limit this practice. And applying that view in this case, where the only limit on the Respondent's discretion to change union employee health benefits was that the changes be the same as it imposed on unrepresented employees, the Respondent would be free to significantly diminish or even completely eliminate the benefit so long as it did so for its unrepresented employees. We cannot discern how an analysis that permits such unbridled discretion can be reconciled with the reasoning of *Katz* or the Court's holding there that the employer made unlawful unilateral changes in wages that were not in line with prior *automatic* wage increases but were instead "*informed by a large measure of discretion*." 369 U.S. at 746 (emphasis added). Indeed, apart from precedent set in the management-rights cases that we overrule today, there seems to be no precedent to support that view.[30] In fact, as set forth previously, there is substantial contrary precedent that the dissent neglects and that clearly supports our view of *Katz* and the appropriate definition of change subject to the customary statutory obligation of advance bargaining.

As to our dissenting colleague's assertion that our interpretation of when employer changes require advance bargaining "defies common sense"—because it prevents an employer from doing "precisely what it has done in the past," or from taking actions "identical to what the employer did before"—we need simply refer to the facts of this case. The record clearly establishes that, although the Respondent has established a pattern of making annual changes to the Beneflex Plan, it has not established a pattern of making anything approaching regularly recurring similar changes on those occasions. As previously described, some Plan changes were made on a recurring basis and some of them were one-time events; some involved the establishment of entirely new benefits, and some involved the complete elimination of existing benefits. By the Respondent's own admission, while the timing was fixed, there were no fixed criteria for the annual changes; the sole alleged criterion, that any changes apply to unit and nonunit employees alike, does not determine the nature or amount of Plan changes in any apparent way, and the Respondent identified none. In our view, it defies common sense to assert that employees would reasonably perceive that there was an established past practice as to any element of the Beneflex Plan or understand what to expect on the occasion of annual revisions to it. As stated in *Katz*, "[t]here simply is no way in such case for a union to know whether or not there has been a substantial departure from past practice, and therefore the union may properly insist" on bargaining in advance of change. 369 U.S. at 746.

This brings us to the dissent's second principal contention—that we have misrepresented the history of relevant precedent. Our colleague asserts that the precedent set in *Beverly 2001* and *Register-Guard* represented a brief and mistaken departure from longstanding precedent permitting unilateral action in the circumstances presented here. We do not dispute that both before and after those cases there have been Board decisions holding that employers lawfully adhered to a past practice of broad discretionary changes established pursuant to a contractual management-rights waiver. What we contend here is that those decisions are in conflict with the longstanding precedent defining change and past practice in every other bargaining context, whether for initial or successor agreements. They are in conflict as well as with the equally longstanding precedent limiting management-rights clauses to their contractual term. (As previously noted, the dissent does not acknowledge this precedent.) *Beverly 2001* and *Register-Guard* corrected this conflict, creat-

[30] Other than the *Courier Journal* cases, *Capitol Ford*, and *Beverly 2006*, the dissent primarily relies on *Shell Oil Co.*, 149 NLRB 283 (1964), *Westinghouse Electric Corp. (Mansfield Plant)*, 150 NLRB 1574 (1965), and *Winn-Dixie Stores, Inc.*, 224 NLRB 1418 (1976), enfd. in part on other grounds 567 F.2d 1343 (5th Cir. 1978). Notably, none of these cases was cited as supporting precedent in the *Courier-Journal* decisions, and for good reason. As previously discussed, *Shell Oil* and *Winn-Dixie* were described in *Beverly 2001* as having been overruled by subsequent precedent. 335 NLRB at 636 fns. 6 & 7. *Westinghouse* was a case where the employer "had unilaterally engaged in the practice of subcontracting for a substantial period of time and the union employees had never performed the work which was subcontracted." *Leeds & Northrup Co. v NLRB*, 391 F.2d 874, 879 (3d Cir. 1968). *Westinghouse* did not involve any management-rights clause and the decision does not indicate that the past practice of subcontracting, while extensive, lacked fixed criteria. In subsequently distinguishing *Westinghouse*, the Board has emphasized that the subcontracting at issue there involved work not performed by unit employees and therefore had no direct adverse impact on them. *University of Pittsburgh Medical Center*, 325 NLRB 443, at 443 fn. 4 (majority opinion) and 444 fn. 2 (concurring opinion)) (1998). See also, e.g., *General Electric Co.*, 264 NLRB 306, at 308–309 (1982).

Bath Iron Works Corp., 302 NLRB 898, 901 (1991) and *Trading Port, Inc.*, 224 NLRB 980, 983–984 (1976), cited in the dissent for the proposition that changes must be "material, substantial, or significant," do not involve an application of the Board's past practice doctrine.

ing a single standard for all collective-bargaining negotiations. Without any mention of those two cases, much less providing a rational explanation for departing from their holdings, the *Courier-Journal* decisions effectively reinstated a different standard for defining what constitutes a change in the management-rights context. But whatever might be said about the history of Board doctrine in this area, our decision today makes a clear and carefully considered choice between different lines of precedent—as the District of Columbia Circuit has directed us to do.

Finally, we refute our dissenting colleague's contention that our holding in this case lacks a rational basis and will disrupt the bargaining process. To reiterate, our decision is well grounded in the Act's fundamental policy to promote the practice of collective bargaining and longstanding precedent implementing that policy. Further, the dissent both exaggerates and distorts the effect that our decision will have on parties' collective bargaining. Contrary to our dissenting colleague, we do not hold that all past practices are erased whenever a contract expires. We hold only that an employer cannot continue a practice of making the same discretionary unilateral changes, not fixed as to timing and criteria, that it was permitted to make pursuant to a management rights clause.[31] Thus, we impose no great new burden on employers or on the bargaining process generally. First, identifying the status quo is not difficult and does not involve the strained "drilling-down" scenario set forth in the dissent. The status quo is whatever employees' concrete terms and conditions of employment are—on the ground, so to speak—when the contract expires. That is the baseline from which the parties bargain. Thus, if a management-rights provision involves healthcare benefits, the benefits in effect at contract expiration—regardless of whether they have been established unilaterally and periodically changed at the employer's discretion up to that moment—must be maintained. Second, employers who wish to be able to continue making discretionary unilateral changes post-expiration can bargain for contract language in the successor agreement that clearly and unmistakably gives them that right. This obligation to bargain over employee terms and conditions of employment is a function of the Act, not a Board-imposed burden. Our decision adheres to a fundamental principle that, with very limited exceptions, bargaining on mandatory subjects should be promoted, not excused.

Indeed, it is the dissenting position that threatens the bargaining process. It is difficult to imagine anything more disruptive to the collective-bargaining process than an employer's exercise of its broad discretion to unilaterally change—or even eliminate—a major term and condition of employment, such as health insurance, which may have a profound effect on the lives of individual employees and their families. In *Katz*, the Court stated, "[u]nilateral action by an employer without prior discussion with the union . . . must of necessity obstruct bargaining, contrary to congressional policy." 369 U.S. at 747. Further, it would discourage unions from agreeing to give employers any rights to make unilateral changes during a contract term for fear that they may never be able to limit the scope of change exercised in subsequent contract negotiations. Because contractual grants of managerial discretion can be an important tool in addressing mid-term issues, a position that discourages agreement to management-rights provisions would significantly impair collective bargaining. More important, permitting an employer to continue to unilaterally make widespread changes to employee terms of employment during negotiations for a successor collective-bargaining agreement would have a deleterious effect on the bargaining process, by forcing unions to bargain to regain benefits lost to post-expiration unilateral changes.[32] It would also undermine the union's stature in the eyes of the employees they represent, signaling that the union is helpless to prevent an employer from acting on its own. In short, permitting effectively unlimited employer discretion to change important terms and conditions of employment—without the consent of the union and while no contract is in place—is a recipe for precisely the sort of disruptive labor disputes the Act is intended to prevent.

VIII. CONCLUSION

In sum, we affirm our previous findings in both decisions that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally changing the terms of the Beneflex Plan at a time when the parties were negotiating for a collective-bargaining agreement and were not at impasse. In response to the court's remand directions, we overrule the *Courier Journal* decisions and *Capitol*

[31] Because the facts before us involve the legality of broad and varied discretionary changes by the Respondent, we need not address the issue whether an employer could continue post-expiration a practice of automatic change based on fixed timing and criteria, if that practice was established pursuant to a management-rights clause,

[32] In addition, at the bargaining table, the extant set of terms and conditions of employment subject to bargaining will have changed, making waste of negotiations and preparations based on those former terms and conditions. The union confronted with these changes will necessarily have to review them and adjust its proposals accordingly, in some instances having now to bargain to regain benefits that have preemptively been eliminated.

Ford, and we disavow dicta in *Beverly Health 2006* to the extent that these cases conflict with our rationale here and departed from well-established statutory bargaining principles. Our duty as a Board is to fulfill the Act's stated purpose of encouraging collective bargaining. Decisions endorsing an employer's right to make broad discretionary unilateral changes in represented employees' terms and conditions of employment are antithetical to that purpose. As the Supreme Court observed in *Katz*, such unilateral action by an employer "will rarely be justified by any reason of substance." 369 U.S. at 747. No such reason presents itself in the circumstances of this case.

AMENDED REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we find it appropriate to apply our decision today retroactively. We find no manifest injustice in so doing, as our analysis is consistent with longstanding precedent and well-established principles. Therefore, we shall order the Respondent to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) of the Act by unilaterally changing the terms of the employees' benefit plan during periods when the parties were engaged in negotiations for a collective-bargaining agreement and had not reached impasse, we shall require the Respondent to make whole the unit employees and former unit employees for any loss of benefits they suffered as a result of the Respondent's unlawful changes to their benefits. Such amounts shall be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB 6 (2010).[33]

Further, in accordance with *Don Chavas, LLC, d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014), and *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016), the Respondent shall compensate employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards and file a report with the Regional Directors of Regions 4 and 9 allocating the backpay awards to the appropriate calendar years for each employee.

Finally, we shall modify the prior Board Orders to provide for notice-posting in accord with *J. Picini Flooring*, 356 NLRB 11 (2010), and, due to the length of time since the violations, we additionally shall order notice mailing to reach employees who otherwise would not see the notices or learn of the violations. We have substituted new notices to conform to the Orders as modified and in accordance with *Durham School Services*, 360 NLRB No. 85 (2014).

ORDER

A. The National Labor Relations Board reaffirms its original Order, reported at 355 NLRB 1084 (2010), as modified and set forth in full below, and orders that the Respondent, E.I. du Pont de Nemours, Louisville Works, Louisville, Kentucky, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with Paper, Allied-Industrial, Chemical, and Energy Workers International Union and its Local 5-2002 (the Union) by making unilateral changes to the benefits of unit employees during periods when the parties are engaged in negotiations for a collective-bargaining agreement and have not reached impasse.

The unit is:

> All employees employed by [the Respondent] at its Louisville Works, Louisville, Kentucky, including powerhouse and refrigeration plant employees, chief operators, shift leaders, fire department employees, cafeteria employees, and counter attendants, but excluding all office clerical employees, chemical supervisors, technical engineers, assistant technical engineers, draftsmen, chemists, nurses and hospital technicians, general foremen, foremen, fire chief, guards, and all other supervisors and professional employees as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the above-described unit.

(b) Upon request of the Union, restore the unit employees' benefits under the Beneflex package of benefit

[33] We will allow the Respondent to litigate in compliance whether it would be impossible or unduly or unfairly burdensome to restore the unit employees' benefits to the terms that existed prior to the unlawful unilateral changes. See *Larry Geweke Ford*, 344 NLRB 628, 629–630 (2005) (employer permitted to litigate in compliance whether it would be unduly burdensome to restore the health insurance coverage in effect prior to the unilateral change).

plans to the terms that existed prior to the unlawful unilateral changes that were implemented on January 1, 2004 and January 1, 2005, and maintain those terms in effect until the parties have bargained to a new agreement or a valid impasse, or until the Union has agreed to changes.

(c) Make all affected employees whole for any losses that they may have suffered as a result of the unilateral implemented changes in benefits in the manner set forth in the remedy section of the decision.

(d) Compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director of Region 9, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amounts due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its Louisville, Kentucky, facility copies of the attached notice marked "Appendix A."[34] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Further, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees at any time since January 1, 2004.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 9 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

B. The National Labor Relations Board reaffirms its original Order, reported at 355 NLRB 1096 (2010), as modified and set forth in full below, and orders that the Respondent, E.I. du Pont de Nemours and Company, Edge Moor, Delaware, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (U.S.W.), and its Local 4-786 (formerly Paper, Allied-Industrial, Chemical and Energy Workers International Union (PACE) and its Local 2-786) (the Union) by making unilateral changes to the benefits of unit employees during periods when the parties are engaged in negotiations for a collective-bargaining agreement and have not reached impasse.

The unit is:

> All employees of the Edge Moor Plant with the exception of the Administrative Secretary to the Plant Manager, Human Resources Assistant, Technologists (Training, Planning, DCS), Work Leader, Nurses, salary role employees exempt under the Fair Labor Standards Act, and supervisory employees with the authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the above-described unit.

(b) Upon request of the Union, restore the unit employees' benefits under the Beneflex package of benefit plans to the terms that existed prior to the unlawful unilateral changes that were implemented on January 1, 2005, and maintain those terms in effect until the parties have bargained to a new agreement or a valid impasse, or until the Union has agreed to changes.

(c) Make all affected employees whole for any losses that they may have suffered as a result of the unilateral implemented changes in benefits in the manner set forth in the remedy section of the decision.

[34] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.

(d) Compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director of Region 4, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amounts due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its Edge Moor, Delaware facility copies of the attached notice marked "Appendix B."[35] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Further, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees at any time since January 1, 2005.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 4 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 26, 2016

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER MISCIMARRA, dissenting.

Former Board Chairman John Fanning once said that "one factor every case has in common . . . is the presence of at least two people who see things completely different."[1] This case involves *more than* two people who see things different. Competing views exist between the parties, between the Board and the court of appeals (which remanded this case back to the Board following an earlier Board ruling), and among the members of the National Labor Relations Board (NLRB or Board).

My view of this case is simple, and it consists of two parts: (1) in 1962, the Supreme Court decided *NLRB v. Katz*,[2] which held that an employer must give the union notice and the opportunity for bargaining before making a "change" in employment matters, and the Court held that bargaining is *not* required before taking actions that are *not* a "change"; and (2) actions constitute a "change" if they materially differ from what has occurred in the past.

My colleagues disagree with me on part 2. When evaluating whether new actions constitute a "change," my colleagues do not just compare the new actions to the past actions. Instead, they look at whether *other things* have changed—specifically, whether a collective-bargaining agreement (CBA) previously existed, whether the prior CBAs contained language conferring a management right to take the actions in question, and whether a new CBA exists containing the same contract lan-

[35] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.

[1] John Fanning, *The National Labor Relations Act: Its Past and Its Future*, in William Dolson and Kent Lollis, eds., *First Annual Labor And Employment Law Institute* 59-70 (1954) (emphasis added), quoted in Matthew M. Bodah, *Congress and the National Labor Relations Board: A Review of the Recent Past*, 22 J. Lab. Res. 699, 713 (Fall 2001). Former Chairman Fanning became a Board member on December 20, 1957 and remained on the Board until December 16, 1982. See http://www.nlrb.gov/who-we-are/board/board-members-1935 (last viewed August 15, 2016).

[2] 369 U.S. 736 (1962). Obviously, the Board is bound by our statute, which requires bargaining in Sections 8(a)(5) and 8(b)(3), and the Board is bound by Supreme Court decisions, which include *NLRB v. Katz*, where the Court held that any "change" from the status quo must be preceded by reasonable notice to the union and the opportunity for bargaining, but these requirements do not apply if there has been no "change."

guage. If not, the employer's new actions constitute a "change" even though they are identical to what the employer did before.

In effect, my colleagues create the labor law equivalent of the "neuralyzer" from the *Men in Black* movies: whenever a CBA expires, past practices are erased and *everything* subsequently done by the employer constitutes a "change" that requires notice and the opportunity for bargaining before it can be implemented.[3]

Take, for example, an employer that has always painted factory walls blue every summer and green every winter. When doing this painting, the employer exercised discretion: it varied the precise shade of blue and green, and it also varied the precise time when the painting would be done. Summer approaches. If the employer again paints the factory walls blue, will that constitute a "change"? In my view, because this is what the employer has always done, it is not a "change" for the employer to do the same thing again.

Here is how my colleagues would analyze it. Summer approaches, and with it, the time to paint the factory walls blue. Will this constitute a "change"? To answer that question, the parties must look at whether CBAs existed previously during all or some of the past factory-wall-painting. If CBAs existed previously, parties must then determine whether those CBAs contained language conferring on management the right to paint the walls as described above, and whether a new CBA containing the same language exists now. If no CBA exists now, or if the CBA does not contain the same language conferring a management right to paint the walls, then everything the employer did in the past is treated like it never happened. Therefore, even though the employer does what it always did (paints the walls blue every summer), my colleagues will find this constitutes a unilateral "change," which means the employer will have violated our statute, and to avoid violating the Act, the employer must first give the union notice and the opportunity for bargaining.[4] In a separate part of their holding, my colleagues also decide that, whenever the employer exercises any "discretion" (in my illustration, for example, the employer always determined the shade of blue or green as well as the exact time when the painting would occur), taking precisely the same action would *always* constitute a "change" because the employer exercised "discretion."

Of course, employers do not just paint walls. They take all kinds of actions, including many that affect wages, hours, benefits and other employment terms. Again, the Supreme Court held in *Katz* that employers can lawfully take these actions without bargaining if doing so does not constitute a "change." According to my colleagues, however, if a past practice developed under contractual management right's language, the expiration of a CBA means that *every* employer action taken thereafter constitutes a "change," even though the employer merely continues doing what it has done before.

I believe this outcome is wrong because it contradicts the Supreme Court's decision in *Katz* and defies common sense. Moreover, I believe the majority's approach will produce significant labor relations instability at a time when employers and unions already face serious challenges attempting to negotiate successor collective-bargaining agreements. Three considerations are important to keep in mind here.

First, unions and employers face enormous challenges in contract negotiations: prioritizing issues, reconciling divergent positions, preparing and responding to information requests, and managing the bargaining process. My colleagues needlessly add to these challenges by creating a new Board-imposed duty for parties to negotiate regarding actions that represent a *continuation* of what the employer has done before.

Second, when no CBA exists, and when parties attempt to comply with this new Board-imposed bargaining obligation (which, again, requires bargaining over actions that merely continue what the employer has done before), the employer's obligation is not merely to negotiate to a single-issue impasse or agreement regarding the particular action that the employer has announced (e.g., painting the walls blue, to use my earlier example). Rather, if no CBA exists, the employer must bargain to agreement or overall impasse regarding *all* mandatory bargaining subjects that are under negotiation before the employer can take action regarding *any* issue.[5] This type

[3] The *Men in Black* movies involve secret agents, played by Tommy Lee Jones and Will Smith, among others, who protect the human race from extraterrestrial aliens who disguise themselves on earth. Whenever the agents destroy or apprehend an alien in the presence of human civilians, the agents use a "neuralyzer" to erase the civilian's memory of the event. See Wikipedia, *Men in Black* (https://en.wikipedia.org/wiki/Men_in_Black_(franchise)) (last viewed August 15, 2016); id., Neuralyzer (https://en.wikipedia.org/wiki/Neuralyzer) (last viewed August 15, 2016).

[4] I have used the painting of factory walls as an example to illustrate the different definitions of "change" that my colleagues and I apply. However, I do not reach or pass on whether the color of factory walls is a sufficiently substantial term or condition of employment to require bargaining under Sec. 8(a)(5) before this can be done, assuming that it constitutes a "change" for purposes of *Katz*.

[5] *Bottom Line Enterprises*, 302 NLRB 373, 374 (1991) ("[A]n employer's obligation . . . encompasses a duty to refrain from implementation at all, unless and until an overall impasse has been reached on bargaining for the agreement as a whole."), enfd. mem. 15 F.3d 1087 (9th Cir. 1994); *RBE Electronics of S.D., Inc.,* 320 NLRB 80 (1995) (same). Although *Bottom Line* and *RBE Electronics* are well established, I do not pass on whether these decisions were correctly decided.

of Board-imposed paralysis—preventing employers from doing precisely what they have done in the past until everything is resolved in pending contract negotiations—will poorly serve employees, unions and employers alike. This is contrary to *Katz* and to the Board's obligation to foster stable labor relations,[6] and it was clearly not intended by Congress. As the Supreme Court stated in *First National Maintenance Corp. v. NLRB*,[7] "in establishing what issues must be submitted to the process of bargaining, Congress had no expectation that the elected union representative would become an equal partner in the running of the business enterprise in which the union's members are employed."[8]

Third, even though *Katz* affords employers the right to take unilateral actions consistent with past practice, employers still have an obligation to bargain with respect to all mandatory bargaining subjects—*including* actions the employer has the right to take unilaterally—whenever the union requests such bargaining. The Act imposes two types of bargaining obligations upon employers: (1) the *Katz* duty to refrain from making a unilateral "change" in any employment term constituting a mandatory bargaining subject, which entails an evaluation of past practice to determine whether a "change" would occur if the employer took the contemplated action; and (2) the duty to engage in bargaining *upon the union's request* over all mandatory bargaining subjects.[9] Existing law makes it clear that this duty to bargain upon request *is not affected by an employer's past practice*.[10] In my "painting-the-walls-blue" illustration, for example, I believe the employer has a unilateral right to paint the walls blue this summer (because doing so would not be a "change"); but the employer is still required to engage in bargaining over this subject—*regardless* of any past practice—if the union requests such bargaining.[11]

Another difference in the instant case concerns how my colleagues describe the development of Board case law. They construct a narrative that starts by describing a time when the Board properly applied the law, as follows: (a) if employer actions occurred during a CBA's term, these were permitted only because of a contractual waiver of bargaining rights (usually pursuant to the management-rights clause); (b) if the employer took the same (or similar) actions when no CBA was in effect, the Board supposedly applied a "traditional and longstanding past practice doctrine"[12] under which the employer's new actions constituted a "change" even if they were identical to what the employer did in the past. Under my colleagues' narrative, this utopian period when the Board properly applied the law was reflected primarily in two cases—*Beverly Health & Rehabilitation Services (Beverly I)*,[13] decided in 2001, and *Register-Guard*,[14] decided in 2003.

The villains in my colleagues' story consist of two Board cases decided in 2004, which I will refer to as *Courier-Journal I* and *Courier-Journal II*.[15] My colleagues state that the *Courier-Journal* cases were "unexplained departures from well-established . . . legal principles" and "veered sharply from the well-established precedent defining a past practice status quo."[16] According to my colleagues, the *Courier-Journal* cases "cannot be reconciled with the traditional and longstanding past practice doctrine"[17] (as established in *Beverly I* and *Register Guard*). Therefore, in today's decision, my colleagues purport to "return to the rule followed in our earlier cases,"[18] thereby restoring the law to its proper state and where it has always been (excluding the traitorous *Courier-Journal* cases and their accursed progeny, *Capitol Ford* and *Beverly II*).

My colleagues' narrative has two problems. First, the story is not true. My colleagues' narrative does not account for an earlier decades-long period during which the Board—consistent with the *Courier-Journal* cases[19]—similarly held that employer actions were not a "change" that required bargaining under *Katz* if they were consistent with past practice, regardless of whether or when

[6] One of the Board's primary responsibilities under the Act is to foster labor relations stability. *Colgate-Palmolive-Peet Co. v. NLRB*, 338 U.S. 355, 362–363 (1949) ("To achieve stability of labor relations was the primary objective of Congress in enacting the National Labor Relations Act."); *NLRB v. Appleton Elec. Co.*, 296 F.2d 202, 206 (7th Cir. 1961) (A "basic policy of the Act [is] to achieve stability of labor relations.").

[7] 452 U.S. 666 (1981).

[8] 452 U.S. at 676 (emphasis added).

[9] See fn. 22, infra and accompanying text.

[10] For more detail regarding the difference between the duty to bargain upon request and the *Katz* duty to refrain from unilaterally changing a term or condition of employment—and the fact that an employer's past practice leaves the former duty undiminished—see fns. 23, 35 & 39, infra.

[11] Although the duty to engage in bargaining upon request is undiminished by the existence of a past practice, there are some potential exceptions that can affect this duty. See fn. 23, infra.

[12] Majority opinion, slip op. at 6.

[13] 335 NLRB 635 (2001), enfd. in relevant part 317 F.3d 316 (D.C. Cir. 2003).

[14] 339 NLRB 353 (2003).

[15] 342 NLRB 1093 (2004) (*Courier-Journal I*), and 342 NLRB 1148 (2004) (*Courier-Journal II*). My colleagues pass equally harsh judgment on similar Board decisions in *Capitol Ford*, 343 NLRB 1058 (2004), and *Beverly Health & Rehabilitation Services, Inc.*, 346 NLRB 1319 (2006) (*Beverly II*).

[16] Majority opinion, slip op. at 8.

[17] Id., slip op. at 6.

[18] Id., slip op. at 3.

[19] Supra fn. 15

a CBA was in effect.[20] In other words, today's decision is not supported by any "traditional and longstanding past practice doctrine" as described by my colleagues. Rather, the Board's "traditional and longstanding" Board case law *contradicts* today's decision. At most, the Board applied *Beverly I* and *Register-Guard* (the two cases relied upon by my colleagues)[21] during a short 3-year period, which was preceded *and* followed by numerous Board cases that squarely rejected the reasoning embraced by my colleagues today. This can hardly be described as a story about a righteous past, a fall from grace, and a restoration of righteousness.

There is a second and more fundamental problem with my colleagues' narrative. This case is not controlled by Board law. It is controlled by the Supreme Court's decision in *Katz*, which interpreted our statute, neither of which can be overruled or changed by my colleagues.

In the remainder of this opinion, I resist the temptation to create a lengthy counter-narrative that replaces the story recounted by my colleagues. Rather, as noted above, this is a simple case: the Board is bound by our statute, and we must adhere to Supreme Court decisions, including the Supreme Court's decision in *Katz*. There, the Supreme Court held that an employer must provide prior notice and the opportunity for bargaining before it implements a "change," and an employer may lawfully take unilateral actions if they are not a "change." Most people understand what "change" means, and I believe this common-sense understanding is what the Supreme Court in *Katz* embraced: when an employer takes action consistent with what it did before, this is not a "change." In my view, it does not matter whether or what type of CBA may exist, or may have existed, when evaluating whether particular actions constitute a "change." My colleagues' view to the contrary improperly confuses the Board's treatment of contractual waivers of the right to bargain—which depend on the existence of a CBA—and what constitutes a "change" for purposes of *Katz*. Equally incorrect, in my view, is my colleagues' finding that every employer action constitutes a "change" that requires bargaining, even if it is identical to what the employer has always done, if the action involves any employer "discretion." This aspect of today's decision is contrary to *Katz* as well as numerous other longstanding and recent Board and court decisions.

For these reasons, as described more fully below, I respectfully dissent.

Discussion

A. The Supreme Court Katz Decision and Other Cases Addressing What Constitutes a "Change"

As noted above, this case is controlled by the Supreme Court's decision in *Katz*. Prior to *Katz*, it was well established that Section 8(a)(5) require parties to engage, upon request, in good-faith negotiation over mandatory bargaining subjects, which the Act defines as "wages, hours, and other terms and conditions of employment"[22] Separate from this duty to bargain upon request,[23] the Supreme Court in *Katz* held that Section 8(a)(5) requires employers to refrain from making a *change* in mandatory bargaining subjects unless the change was preceded by giving the union notice and the opportunity for bargain-

[20] See, e.g., *Shell Oil Co.*, 149 NLRB 283 (1964); *Westinghouse Electric Corp. (Mansfield Plant)*, 150 NLRB 1574 (1965); *Winn-Dixie Stores, Inc.*, 224 NLRB 1418 (1976). See also the text accompanying notes 30–44, infra.

[21] Although *Beverly I* and *Register-Guard* provide support for the reasoning adopted by my colleagues today, each case is distinguishable from the instant cases. In *Beverly I*, the employer did not rely on a past practice defense, and the employer in *Register-Guard* did not establish that the changes undertaken were consistent with past actions taken by the employer.

[22] Sec. 8(d). A subject is considered a "mandatory" subject of bargaining when it is among the subjects described in Sec. 8(d) of the Act, which defines the duty to bargain collectively as encompassing "wages, hours, and other terms and conditions of employment." *NLRB v. Borg-Warner Corp.*, 356 U.S. 342, 349 (1958) (regarding mandatory subjects, the employer and union upon request have an "obligation . . . to bargain with each other in good faith," although "neither party is legally obligated to yield"); *NLRB v. Katz*, 369 U.S. at 743 ("A refusal to negotiate *in fact* as to any subject which is within § 8(d), and about which the union seeks to negotiate, violates § 8(a)(5) though the employer has every desire to reach agreement with the union upon an over-all collective agreement and earnestly and in all good faith bargains to that end.") (emphasis added).

[23] There are some exceptions to the requirement to bargain upon request over a mandatory subject, including, for example, where the parties have entered into a collective-bargaining agreement that suspends the obligation to bargain for the agreement's term, or that constitutes a waiver of the obligation to bargain or covers the subject matter at issue. *Provena St. Joseph Medical Center*, 350 NLRB 808, 811 (2007). Cf. *Department of Navy v. FLRA*, 962 F.2d 48, 57 (D.C. Cir. 1992) (describing "contract coverage" standard applied by some courts when evaluating whether unilateral action is permitted); *NLRB v. Postal Service*, 8 F.3d 832, 836–837 (D.C. Cir. 1993) (same); *Chicago Tribune Co. v. NLRB*, 974 F.2d 933, 936–937 (7th Cir. 1992) (same).

Significantly, as noted above, the duty to bargain upon request regarding a mandatory subject of bargaining is *not* satisfied or eliminated based on an employer's past practice. Therefore, even if an employer has taken actions involving wages or other employment terms in precisely the same way, the existence of such a past practice does *not* permit the employer to refuse to bargain over the subject if requested to do so by the union. See, e.g., *Shell Oil Co.*, 149 NLRB 283, 287 (1964). In other words, even though *Katz* permits the employer to take unilateral actions to the extent they are not a "change" (i.e., if they are consistent with past practice), the employer must engage in bargaining regarding those actions whenever the union requests such bargaining, unless an exception to the duty to bargain applies—e.g., the existence of CBA language that waives any obligation to bargain over the subject or that demonstrates that bargaining over the subject has already occurred. See *Provena*, supra; *Department of Navy v. FLRA*, supra.

ing regarding the planned change.[24] Among other things, the employer in *Katz*—while engaging in initial contract negotiations with the Union—unilaterally implemented merit wage increases for some employees and not others, without giving the union any notice or the opportunity for bargaining regarding the merit increases before they were imposed. The employer implemented selective "merit increases" that had been discussed in three bargaining sessions, even though "no final understanding had been reached."[25] The Supreme Court concluded that unilaterally changing wages constituted an unlawful refusal to bargain in violation of Section 8(a)(5):

> The respondents' . . . unilateral action related to merit increases . . . . must be viewed as tantamount to an outright refusal to negotiate on that subject, and therefore as a violation of § 8(a)(5), *unless . . . the January raises were in line with the company's long-standing practice of granting quarterly or semiannual merit reviews—in effect, were a mere continuation of the status quo* . . . . Whatever might be the case as to so-called "merit raises" which are in fact simply automatic increases to which the employer has already committed himself, *the raises here in question were in no sense automatic, but were informed by a large measure of discretion. There simply is no way in such case for a union to know whether or not there has been a substantial departure from past practice,* and therefore the union may properly insist that the company negotiate *as to the procedures and criteria for determining such increases*.[26]

The rule in *Katz* is that employers *cannot* deviate from the status quo by making unilateral changes in wages and other mandatory bargaining subjects. The *Katz* exception—often referred to as the "dynamic status quo"—permits unilateral wage increases that are supported by the employer's past practice.[27] As described by Professors Gorman and Finkin in the most recent edition of their well-known treatise:

> [T]he case law (including the *Katz* decision itself) makes clear that conditions of employment are to be viewed dynamically and that *the status quo against which the employer's "change" is considered must take account of any regular and consistent past pattern of change*. An employer modification consistent with such a pattern is not a "change" in working conditions at all.[28]

One conclusion is readily apparent from the above descriptions of what constitutes a "change" for purposes of *Katz*. There is no suggestion that the determination of whether a "change" had occurred involved anything more than determining "whether or not there has been a *substantial departure from past practice*."[29] In other words, when evaluating whether particular actions constitute a "change," one evaluates *only* the action or actions taken in relation to actions that have been taken in the past. One does not consider whether the actions taken in the past were taken under a CBA containing a management right's clause or other contractual bargaining waiver.

Indeed, in *Shell Oil*, which was decided by the Board in 1964 (two years after the Supreme Court's *Katz* decision), the Board squarely rejected the position urged by my colleagues today. The Board held that, when evaluating whether an employer's actions constitute a "change," this does *not* depend on whether past actions were permitted by CBA language that no longer applies following the CBA's expiration.

In *Shell*, the parties' CBA contained a subcontracting clause—article XIV—that authorized the employer to subcontract bargaining-unit work without giving the union notice and an opportunity to bargain. Consistent with management's right recognized in article XIV, the employer "for some time" had subcontracted construction and maintenance work.[30] The CBA expired in March 1962, and a lengthy hiatus period ensued during which no CBA was in effect.[31] During the hiatus, the employer subcontracted three construction and/or maintenance jobs without giving the union notice and opportunity to bargain.[32]

In these circumstances, the Board in *Shell* found that the employer did not violate Section 8(a)(5) of the Act when it unilaterally subcontracted work during the hiatus between contracts because the subcontracting was con-

[24] Although *Katz* involved the obligation to refrain from making changes from the status quo during negotiations for a first contract, the *Katz* principle was subsequently reaffirmed by the Supreme Court in the context of negotiations for a new CBA following expiration of the prior CBA. See *Litton Financial Printing Division v. NLRB*, 501 U.S. 190, 198 (1991).

[25] 369 U.S. at 746.

[26] Id. at 745–747 (emphasis added; footnote omitted).

[27] Id. at 746.

[28] Robert A. Gorman, Matthew W. Finkin, Labor Law Analysis and Advocacy, at 720 (Juris 2013) (hereinafter "Gorman & Finkin") (emphasis added). See also *Westinghouse Electric Corp. (Mansfield Plant)*, 1577 (1965) (referring to whether unilateral subcontracting decisions "vary significantly in kind or degree from what had been customary under past established practice").

[29] *Katz*, 369 U.S. at 746–747 (emphasis added).

[30] 149 NLRB at 284.

[31] Id. at 285.

[32] Id. at 285–286.

sistent with what the employer had done previously. The General Counsel argued that the new subcontracting during the hiatus must be regarded as a change because the prior subcontracting occurred during the CBA (which contained article XIV, the subcontracting clause that recognized management's right to engage in subcontracting unilaterally), and the General Counsel contended that "termination of the preceding agreement in March 1962 revived any bargaining rights the Union may have surrendered under article XIV."[33] The Board rejected this argument for reasons that have equal application in the instant case:

> In our opinion, the rights and duties of parties to collective bargaining, during a hiatus between contracts, may be derived from sources other than a formal extension agreement. Thus, it is well settled that notwithstanding the termination of a labor contract, the parties, pending its renewal or renegotiation, have the right and obligation to maintain existing conditions of employment. Unilateral changes therein violate the statutory duty to bargain in good faith. We are persuaded and find that *Respondent's frequently invoked practice of contracting out occasional maintenance work on a unilateral basis*, while predicated upon observance and implementation of article XIV, *had also become an established employment practice and, as such, a term and condition of employment*.[34]

The Board concluded:

> [I]t does not appear that the subcontracting during this hiatus period *materially varied in kind or degree from what had been customary in the past*. In these circumstances, we cannot say that the Respondent's action in subcontracting, according to its established practice, certain unit work without prior notice to or bargaining with the Union *during the period when no bargaining agreement was in effect* was in derogation of a statutory duty to bargain on terms and conditions of employment.[35]

Significantly, the Supreme Court in *Fibreboard Paper Products Corp. v. NLRB*[36] upheld the Board's position that certain subcontracting decisions were a mandatory subject of bargaining. Yet, in the Board's very first post-*Fibreboard* case evaluating subcontracting—*Westinghouse Electric Corp. (Mansfield Plant)*[37]—the Board reiterated that determining what constitutes a "change," even during the hiatus between contracts, involves comparing the challenged actions taken by the employer with what the employer had done in the past. Thus, in *Westinghouse* the Board, applying *Katz* and *Fibreboard*, squarely rejected the position that my colleagues are adopting today.

In *Westinghouse*, the Board held that the employer lawfully implemented "thousands of contracts"[38] during a hiatus period between contracts, and it explained this decision as follows:

> [I]t is wrong to assume that, *in the absence of an existing contractual waiver*, it is a per se unfair labor practice in all situations for an employer to let out unit work without consulting the unit bargaining representative. As the Supreme Court [in *Katz*] has indicated in a broader context, even where a subject of mandatory bargaining is involved, there may be "circumstances which the Board could or should accept as excusing or justifying unilateral action."
>
> It is also pertinent to the issue before us to observe that an employer's duty to give a union prior notice and an opportunity to bargain normally arises *where the employer proposes to take action which will effect some change in existing employment terms or conditions within the range of mandatory bargaining*. In the *Fibreboard* line of cases, where the Board has found unilateral contracting out of unit work to be violative of Section 8(a)(5) and (1), it has invariably appeared that *the contracting out involved a departure from previously established operating practices*, effected *a change in conditions of employment*, or resulted in a significant impairment of job tenure, employment security, or reasonably anticipated work opportunities for those in the bargaining unit.

[33] Id. at 287.

[34] Id. at 287 (emphasis added).

[35] Id. at 288 (emphasis added). The Board in *Shell Oil* also held that, even though the employer could continue its practice of engaging in unilateral subcontracting during the hiatus between contracts—i.e., without giving the union advance notice and the opportunity for bargaining before making and implementing the subcontracting decision—the union retained its right to request bargaining over subcontracting, and the employer—though permitted to proceed with subcontracting unilaterally—was still required to engage in bargaining as requested by the union. Thus, separate from the employer's right to engage in lawful subcontracting under *Katz*, any existing past practice did not eliminate the employer's duty to engage in bargaining upon request by the union because the union had the right "to propose a change in or elimination of the Company's practice and to request bargaining thereon." Id. But the Board stated that "the Union's demand to bargain for a modification or elimination of the Respondent's established practice did not suspend the Respondent's right to maintain its established practice, any more than a demand by the Union to modify the existing wage structure would suspend Respondent's obligation to maintain such wage structure during negotiations." Id. at 287–288.

[36] 379 U.S. 203, 211 (1964).

[37] 150 NLRB 1574 (1965).

[38] Id. at 1576.

> Here, however, there was no departure from the norm in the letting out of the thousands of contracts to which the complaint is addressed. The making of such contracts was but a recurrent event in a familiar pattern comporting with the Respondent's usual method of conducting its manufacturing operations at the Mansfield Plant. It does not appear that the subcontracting engaged in during the period in question materially varied in kind or degree from that which had been customary in the past.[39]

Even when dealing with something as central to the Act as wages, the Board has likewise found that, when an employer has a past practice of providing certain wage increases, an employer does not violate Section 8(a)(5) when it provides new wage increases in keeping with that practice without bargaining. See, e.g., *Daily News of Los Angeles*, 315 NLRB 1236 (1994), enfd. 73 F.3d 406 (D.C. Cir. 1996). Indeed, although the majority in today's decision finds that any "discretion" associated with an employer's action means the action constitutes a "change" that cannot be unilaterally implemented, regardless of whether the employer has taken precisely the same actions in the past, the Board in other cases has expansively defined "past practice" when finding that the Act *requires* employers to take unilateral actions—specifically, to provide new wage increases without bargaining—even though the past wage increases involved substantial employer discretion. See *Arc Bridges, Inc*., 355 NLRB 1222 (2010), enf. denied 662 F.3d 1235 (D.C. Cir. 2011); *Mission Foods*, 350 NLRB 336, 337 (2007); *Central Maine Morning Sentinel*, 295 NLRB 376 (1989).[40]

Nor has the Board required bargaining prior to an employer's minor variations from actions taken in the past. "When changes in existing plant rules . . . constitute merely particularizations of, or delineations of means for carrying out, an established rule or practice," it is lawful to continue applying the same rules without bargaining because the changes are not sufficiently "material, substantial, and significant" to require notice and the opportunity to bargain. *Bath Iron Works Corp.*, 302 NLRB 898, 901 (1991); see *Trading Port, Inc.*, 224 NLRB 980, 983–984 (1976) (employer implemented no change that required bargaining when the employer applied its preexisting productivity standards, including penalties for failing to satisfy those standards, but "devised a more efficient means of detecting individual levels of productivity, of policing individual efficiency, and advanced a more stringent view towards below average producers than in the preceding 18 months or so").

In more recent decisions—as the Court of Appeals for the D.C. Circuit recognized when remanding this case—the Board and the courts have likewise held that, following a CBA's expiration, employers may lawfully take unilateral actions consistent with past practice, even though the practice may have occurred in whole or in part while prior CBAs were in effect. In *Courier-Journal I*, the Board held that the legality of employer actions consistent with past practice following contract expiration did not depend on "'whether a contractual waiver of the right to bargain survives the expiration of the contract' but rather upon whether the change 'is grounded in past practice, and the continuance thereof.'"[41] In *Capitol Ford*, the Board stated that "'the mere fact that the past practice was developed under a now-expired contract does not gainsay the existence of the past practice,'" and "although the employer 'cannot rely upon the management rights clause of that contract to justify unilateral action,' the 'past practice is not dependent on the continued existence of the [expired] collective-

[39] Id. (emphasis added). In *Westinghouse*, the Board again stated that an employer's right to engage in unilateral subcontracting consistent with past practice did not affect or diminish the employer's obligation, upon request, to bargain with the union regarding subcontracting. Id. at 1576–1577 ("We do not mean to suggest that, because subcontracting in accordance with an established practice may stand on a different footing from that of subcontracting in other contexts, an employer is any less under an obligation to bargain with the union on request at an appropriate time with respect to such restrictions or other changes in current subcontracting practices as the union may wish to negotiate."). Significantly, the Board held that this duty to bargain upon request was an additional reason not to require bargaining before an employer took action that was consistent with past practice. Thus, the Board in *Westinghouse* explained: "The fact that the Union does have an opportunity to bargain generally on request about Respondent's recurrent subcontracting practices, *provides in our view a contributing, though not a controlling, reason for not imposing upon the Respondent the duty to bargain separately, at the decision-making level, about each of the thousands of individual subcontracts covering work that could be performed by its own employees*." Id. at 1577 (emphasis added).

As noted in the text, the union's right to request bargaining regarding mandatory subjects is not reduced or eliminated merely because an employer may have the right to take unilateral action consistent with its past practice, and any contractual waiver of the union's right to request bargaining would remain predicated on the existence of a contract. Id.

[40] In my view, the Board must exercise considerable care when interpreting *Katz*—where the Supreme Court described a *defense* against an allegation that an employer's unilateral changes violated Sec. 8(a)(5)—to mean that Sec. 8(a)(5) imposes an obligation on employers to *make* unilateral changes in wages, particularly since the Act explicitly states that the duty to bargain "does not compel either party to agree to a proposal or require the making of a concession." Sec. 8(d); see also *H. K. Porter Co. v. NLRB*, 397 U.S. 99, 102 (1970). I do not here reach or pass on the validity of cases that apply this reverse version of the *Katz* exception.

[41] *E.I. du Pont de Nemours & Co. v. NLRB*, 682 F.3d 65, 69 (D.C. Cir. 2012) (*DuPont* remand) (quoting *Courier–Journal I*, 342 NLRB at 1095).

bargaining agreement.'"[42] To the same effect, as the D.C. Circuit observed in its decision remanding these cases, the Court of Appeals for the Sixth Circuit "captured the point precisely" in *Beverly Health and Rehabilitation Services, Inc. v. NLRB*, 297 F.3d 468 (6th Cir. 2002), where the Sixth Circuit stated: "'[I]t is the *actual past practice of unilateral activity under the management-rights clause of the CBA*, and *not* the existence of the management-rights clause itself, that allows the employer's past practice of unilateral change to survive the termination of the contract."[43] And in *Beverly II*, although a consistent past practice had not been established, the Board stated that "'without regard to whether the management-rights clause survived,'" the employer would have been "'privileged'" to make "'the unilateral changes at issue if [its] conduct was consistent with a pattern of frequent exercise of its right to make unilateral changes during the term of the contract.'"[44]

It is true that, contrary to this extensive and consistent application of *Katz*—finding that an employer has made no "change" when it has taken the same action previously, regardless of whether a CBA was in effect—the Board issued decisions in *Beverly I*,[45] decided in 2001, and *Register-Guard*,[46] decided in 2003, which support the reasoning adopted by my colleagues in today's decision. At most, however—as the above discussion demonstrates—*Beverly I* and *Register-Guard* were short-lived departures from preexisting case law, and the Board returned to its prior longstanding treatment of this issue, consistent with *Katz*, in the *Courier-Journal* cases (decided in 2004), *Capitol Ford* (also decided in 2004), and *Beverly II* (decided in 2006).[47]

B. The Board Majority Incorrectly Redefines What Employer Actions Constitute a "Change" Requiring Advance Notice and the Opportunity for Bargaining

For several reasons, I disagree with my colleagues' redefinition of the term "change" under *Katz*, and I believe they erroneously expand the *Katz* duty to refrain from making unilateral changes to encompass situations where an employer continues its preexisting practice. In particular, when evaluating whether an employer's actions constitute a "change," I believe it is unreasonable to require parties and the Board to examine whether and what type of CBA(s) may have existed at various times in the past. I also believe my colleagues improperly conclude that everything constitutes a "change" within the meaning of *Katz*—regardless of what an employer has done in the past—if the employer's actions involve "discretion."

First, as noted above, *Katz* supports a view that, when examining whether an employer's actions constitute a "change" (triggering the obligation to provide notice and

[42] Id. (quoting *Capitol Ford*, 343 NLRB at 1058 fn. 3) (alteration in *DuPont* remand).

[43] Id. (quoting *Beverly Health and Rehabilitation Services, Inc. v. NLRB*, 297 F.3d at 481) (alteration in *DuPont* remand; emphasis added).

[44] Id. at 69–70 (quoting *Beverly II*, 346 NLRB at 1319 fn. 5) (alteration in *DuPont* remand).

[45] 335 NLRB at 635.

[46] 339 NLRB at 353.

[47] It is not correct, as my colleagues appear to argue, that *Shell Oil* and *Winn-Dixie* were subsequently overruled with respect to the holdings of those cases that are relevant here. My colleagues indicate that *Shell Oil* and *Winn-Dixie* were "deemed" by the Board in *Beverly I* to have been "overruled in relevant part[,]" sub silentio, by subsequent precedent (Majority opinion, slip op. at 5-6, fn. 17). However, the only aspects of *Shell Oil* and *Winn-Dixie* that were referenced in *Beverly I* as being potentially overruled involved a different proposition—that a management-rights clause does not survive contract expiration—with which I completely agree. See *Beverly I*, 335 NLRB at 636 ("[T]he management-rights clause in those agreements . . . did not survive the contracts' expiration.") (footnote omitted). The Board in *Beverly I* then indicated that, "[t]o the extent" that *Shell Oil* and *Winn-Dixie* "could be read to imply the contrary," they had been overruled *sub silentio* in more recent cases. Again, this pertained *only* to whether a management-rights clause survives contract expiration, which is not disputed in the instant case. Moreover, the Board's suggestion in *Beverly I*—that *Shell Oil* or *Winn-Dixie* "could be read to imply" that management-rights clauses survive contract expiration—was unfounded. Neither *Shell Oil* or *Winn-Dixie* implies any such thing: neither decision held or so much as suggested that a management-rights clause survives following expiration of the CBA. Rather, as described in the text, the decisions in *Shell Oil* and *Winn-Dixie* reflect the fact that an employer's actions *based on past practice* do not constitute a "change" over which bargaining is required. It is true that in *Beverly I*, two members of a three-member panel—Members Liebman and Walsh—expressed the same position the majority adopts today: that a past practice developed under the auspices of a management-rights clause terminates at the expiration of the CBA that contained that clause. 335 NLRB at 636 & fn. 7. However, the third member of the panel, Chairman Hurtgen, rejected that view. Id. at 646 ("[E]ven if the management-rights clause expired with the contract, the work practices that were extant during the contract constituted a part of the terms and conditions of employment. Thus, if the employer, after contract expiration, continues to act consistently with those practices, it has not 'changed' the status quo and it has not violated Section 8(a)(5)."). Because the Board adheres to the practice that two members cannot overrule Board precedent, this makes it even clearer that the panel majority consisting of Members Liebman and Walsh in *Beverly I* did not overrule *Shell Oil* or *Winn-Dixie*. Prior to my colleagues' decision today, the Board has never overruled *Shell Oil* or *Winn-Dixie* (by implication or otherwise) regarding the import of past practice—which is unaffected by the existence or nonexistence of a management-rights clause—and this holding was subsequently reaffirmed in the *Courier-Journal* cases, *Capitol Ford*, and *Beverly II*.

Moreover, this is precisely the distinction made by the D.C. Circuit when it remanded this case. As the court stated, "whether a management-rights clause survives the expiration of the contract is beside the point Du Pont is making." *DuPont* remand, 682 F.3d at 69. The court then stated that the Sixth Circuit also "captured the point precisely" when it observed that "'it is the actual past practice of unilateral activity under the management-rights clause of the CBA, and not the existence of the management-rights clause itself, that allows the employer's past practice of unilateral change to survive the termination of the contract.'" Id. (quoting *Beverly Health and Rehabilitation Services, Inc. v. NLRB*, 297 F.3d 468, 481 (2002)).

the opportunity for bargaining), the only relevant factual question is whether the employer's actions are similar in kind and degree to what the employer did in the past. This is precisely the inquiry undertaken by the Supreme Court in *Katz*, as shown by the Court's finding that the employer's merit increases were not "in line with the company's long-standing practice of granting quarterly or semiannual merit reviews," and its resulting conclusion that the increases could not reasonably be regarded as "a mere continuation of the status quo." In determining whether the employer had made a change, the Court focused on the union's ability to determine "whether or not there has been a substantial departure from past practice" involving, among other things, "the procedures and criteria for determining such increases."[48]

Second, in *Katz*, the employer was engaged in bargaining for an initial contract, and the Supreme Court held that the employer's unilateral actions would have been permissible to the extent they were consistent with its "long-standing practice."[49] This leaves no doubt that the Supreme Court in *Katz*—at least in this context—focused specifically on what actually occurred without regard to any prior contractual waiver (since no prior contracts existed) when determining whether the employer's action constituted a "change."

Third, I believe the issues presented here are controlled by *Katz*. Thus, although my colleagues portray these issues as being within the province of the Board—if true, the majority would be free to change existing law if it articulates a reasoned justification for doing so[50]—the Board is duty-bound to apply decisions of the Supreme Court, including decisions interpreting the Act. As to the proper interpretation of what constitutes a "change," however, I believe there is no "reasoned justification"[51] for abandoning the longstanding interpretation of *Katz*[52] that the Board applied consistently over many decades—except for the 3-year period when it deviated from this interpretation in *Beverly I* and *Register-Guard*—as reflected in the *Courier-Journal* cases, *Shell Oil*, and *Westinghouse*, among others. As the Board has stated, whether a "change" has occurred under *Katz* does not depend on "whether a contractual waiver of the right to bargain survives the expiration of the contract" but rather upon whether the change "is grounded in past practice, and the continuance thereof";[53] "the mere fact that the past practice was developed under a now-expired contract does not gainsay the existence of the past practice";[54] and even when the employer's actions involved "thousands of contracts" with outside employers during a hiatus between CBAs, there was no "change" that required advance notice and potential bargaining with the union when the employer's actions did not "materially var[y] in kind or degree from that which had been customary in the past."[55]

Fourth, as noted above, I believe the majority's understanding of what constitutes a "change" defies common sense. Nearly everyone would evaluate whether a "change" has occurred by comparing the challenged actions to the employer's past actions. In contrast, my colleagues define "change" as requiring the examination of matters *other than* what occurred before. Specifically, if an employer is doing precisely what it has always done, my colleagues find this involves a "change" if past actions were taken when a CBA containing a management rights clause was in effect. It is incongruous to determine whether a "change" has occurred during periods when no CBA exists by undertaking a detailed historical examination of past CBA provisions, all of which have expired. Not only does this improperly confuse the concept of "contractual waiver" with the *Katz* focus on what constitutes a "change," it is a near-certainty that the Board's analysis of these purely contractual issues would not be afforded deference by the courts. See *Litton Financial Printing Division v. NLRB*, 501 U.S. at 203 ("We would risk the development of conflicting principles were we to defer to the Board in its interpretation of the contract, as distinct from its devising a remedy for the unfair labor practice that follows from a breach of contract.").

[48] *Katz*, 369 U.S. at 746–747.

[49] *Katz*, 369 U.S. at 746.

[50] As the D.C. Circuit correctly observed when remanding these cases to the Board, when the Board deviates from its own precedent—which it clearly did when it decided these cases previously—the Board is required, at a minimum, to provide a "reasoned justification for departing from its precedent." *DuPont* remand, 682 F.2d at 70 (citation omitted).

[51] Id. at 70.

[52] The D.C. Circuit, when rejecting the Board's prior analysis, stated that it was not consistent with the Board's own decisions. The D.C. Circuit did not state its views regarding the merits, but it is significant that the court of appeals described *Katz* as holding that an employer "unilaterally may implement changes 'in line with [its] long-standing practice' because such changes amount to 'a mere continuation of the status quo,'" and the court quoted *Courier-Journal* for the proposition that "'a unilateral change made pursuant to a longstanding practice is essentially a continuation of the *status quo*—not a violation of Section 8(a)(5).'" 682 F.3d at 67 (quoting *Katz*, 369 U.S. at 746, and *Courier-Journal I*, 342 NLRB at 1094)). I believe both of these propositions, which the D.C. Circuit quoted with approval, are contrary to the Board majority's holding in the instant case.

[53] *Courier–Journal I*, 342 NLRB at 1094.

[54] *Capitol Ford*, 343 NLRB at 1058 fn. 3.

[55] *Westinghouse*, 150 NLRB at 1576; see also *Shell Oil*, 149 NLRB at 288 (no duty under *Katz* to provide advance notice and the opportunity for bargaining regarding subcontracting during hiatus period that had not "materially varied in kind or degree from what had been customary in the past").

Fifth, by requiring scrutiny of prior CBAs, possibly extending back in time over decades, the majority establishes a standard with which most employers and unions will find it impossible to comply. Here, my colleagues do not merely misinterpret *Katz*, they *eliminate* the holding of *Katz* permitting employers to take actions "in line with the company's long-standing practice"[56] to the extent their standard will prevent anyone from establishing the existence of a "long-standing practice."[57] My colleagues use shorthand references to the mere existence or nonexistence of a CBA, which incorrectly presume that any past employer actions taken during a CBA's term must have been permissible only because the CBA contained a contractual waiver. However, their standard clearly requires meticulous scrutiny into myriad details. Rather than doing what *Katz* directs—which is to inquire whether the employer's challenged actions are consistent with what it did before—the majority's approach requires detailed scrutiny into the following:

(a) precisely when did prior actions occur, when did they commence, and when did they cease;
(b) whether and to what extent prior actions coincided with times when prior CBAs existed, or before any CBAs existed, and/or during hiatus periods between CBAs;[58]
(c) where prior actions were permitted pursuant to side agreements, grievance settlements, or arbitration awards that were not memorialized in any CBA, whether these constituted a "waiver" or were merely based on a preexisting management right that existed separate from any agreement;
(d) what substantive contract terms existed in any prior CBAs pertaining to the "past practice"; what came first, the CBAs or the employer's practice; and did the CBA constitute a "waiver" permitting unilateral actions the employer could otherwise not take, or did the CBA merely recognize a preexisting management right that existed separate from the CBA;
(e) how did relevant CBA provisions, side agreements, grievance settlements, or arbitration awards evolve over the years; when did the changes occur; and how did these provisions, agreements, settlements or awards coincide with the employer's past actions; and
(f) did negotiating history establish that parties agreed the employer lacked the right to take particular actions absent express language in the CBA, or did the employer insist on CBA provisions that conformed to a right that had already been exercised and as to which the union acquiesced.

The Supreme Court did not deem any of these considerations relevant when it considered *Katz* or *Litton*. Indeed, it is clear the Supreme Court would have rejected arguments that such scrutiny was necessary to determine whether employer actions constituted a "change" from what had occurred before. To borrow the Supreme Court's language in *Katz*, under my colleagues' approach "[t]here simply is no way . . . for a union" or anyone else "to know whether or not there has been a substantial departure from past practice."[59]

Sixth, my colleagues attempt to minimize the unworkable nature of today's decision, as illustrated above, but

[56] *Katz*, 369 U.S. at 746.

[57] Id.

[58] My colleagues no longer rely on the (false) dichotomy between unilateral changes made during the term of a contract and unilateral changes made during the hiatus periods between contracts, which the Board previously relied on in attempting to distinguish the instant cases from the *Courier-Journal* cases. See *E.I. DuPont de Nemours, Louisville Works*, 355 NLRB 1084, 1084–1085 (2010); *E.I. DuPont de Nemours & Co. (Edge Moor)*, 355 NLRB 1096, 1096 (2010). This notwithstanding, drilling down into the contracts would still require us to analyze, in at least some circumstances, interpretations of language in (expired) contracts during hiatus periods.

[59] *Katz*, 369 U.S. at 746–747 (emphasis added). Indeed, another incongruity resulting from my colleagues' redefinition of "change" under *Katz* is their creation of multiple different standards that parties would need to apply when evaluating whether a "change" occurred. One *Katz* standard would apply during bargaining for an initial contract, when no union has previously represented the unit employees and no CBA has previously existed. In this situation, parties would determine whether a "change" occurred merely by comparing the challenged employer actions with the employer's past actions. A second *Katz* standard would apply during initial contract negotiations, where the same employer and union *were* party to prior CBAs. Here, whether a "change" occurred would depend, in part, on a detailed scrutiny of prior CBA provisions in relation to the employer's past actions, as described in the text. A third *Katz* standard would apply whenever the employer is engaged in first contract negotiations with *one* union, where employees were previously represented a *different* union that had been party to prior CBAs with *the same employer*. In this situation, my colleagues would find that the employer's prior actions—if taken pursuant to one or more CBAs with the different union—would be irrelevant when determining whether the challenged action or actions constituted a change. However, this conclusion would follow from the prior CBAs, under the reasoning utilized by my colleagues, only if the employer's prior actions were impermissible in the absence of a contractual bargaining waiver, which would again require detailed examination of the prior CBAs, the specific CBA provisions that ostensibly privileged the employer's past actions, and similar issues. Other situations could very well involve different combinations of the above circumstances. In any event, because my colleagues' reasoning would require this type of examination—which parties would nearly always find impossible to reconstruct within a reasonable period to permit bargaining, if required—my colleagues are effectively eliminating the *Katz* holding that permits employer actions that are consistent with "long-standing practice," 369 U.S. at 746, which exceeds the Board's authority.

in doing so, they make matters worse. The cornerstone of my colleagues' analysis is that, whenever management actions are taken pursuant to rights *conferred by clear and unmistakable CBA language*, those actions are not part of the "status quo" that may lawfully be continued unilaterally following the CBA's expiration, because contractual bargaining waivers expire with the CBA. However, this also means that employers have the right to continue without bargaining, as part of the status quo, past practices that are *unrelated* to contractual rights conferred under past CBAs. My colleagues must recognize that these types of past practices continue as part of the "status quo" because (i) this is precisely what the Supreme Court held in *Katz*, and (ii) even under my colleagues' analysis, a CBA's expiration only eradicates those past practices where the employer's unilateral actions were based on rights conferred by "clear and unmistakable" CBA language.[60] In fact, my colleagues concede that, under their theory, all "*extracontractual* terms and conditions of employment that have become established by past practice" *remain* part of the "status quo" that may be continued unilaterally after a CBA's expiration—to borrow my colleagues' words, these extracontractual past practices "*must* be maintained after a contract's expiration."[61] Therefore, as explained in the preceding paragraph, my colleagues' analysis requires parties to reconstruct what past practices developed in connection with rights conferred by past clear and unmistakable CBA language (which my colleagues would find may *not* be continued as part of the "status quo"), as opposed to those "extracontractual" past practices that employers *may* continue—indeed, *must* continue—as part of the "status quo" without bargaining.

Here is where matters get worse. My colleagues state that their new approach does *not* require this "drilling-down" because, in their view, any CBA's expiration extinguishes *all* past practices, *including those that developed extracontractually*. My colleagues' explanation speaks for itself:

> [W]e impose no great new burden on employers or on the bargaining process generally. First, identifying the status quo is not difficult and does not involve the strained "drilling-down" scenario set forth in the dissent. *The status quo is whatever employees' concrete terms and conditions of employment are—on the ground, so to speak—when the contract expires*. That is the *baseline from which the parties bargain*. . . . Second, *employers who wish to be able to continue making discretionary unilateral changes post-expiration can bargain for contract language in the successor agreement that clearly and unmistakably gives them that right*.[62]

My colleagues cannot have it both ways. Their own opinion differentiates between (i) "extracontractual" practices that employers may continue (must continue) without bargaining following the CBA's expiration, and (ii) practices attributable to clear and unmistakable contract language that (according to my colleagues) may *not* be continued as part of the "status quo." This distinction requires the type of meticulous "drilling-down" that I have described previously. Alternatively, if one accepts my colleagues' explanation in the above-quoted passage, there is no need for "drilling-down," but this is only because my colleagues extinguish virtually *all* past practices from the status quo when any CBA expires, and the "baseline" from which parties must bargain consists of "whatever employees' concrete terms and conditions of employment are . . . when the contract expires."[63] My colleagues' "baseline" approach has one virtue: it is indeed simple. Employers can never take actions unilaterally based on any past practice after a CBA expires. However, this approach is irreconcilable with *Katz*, it is contradicted by my colleagues' own opinion (including

[60] The entire premise of my colleagues' reasoning is that contractual waivers terminate with the expiration of the CBA. Therefore, the types of past practice that are extinguished upon the CBA's expiration are actions that were based on rights conferred by CBA language. This means that when a CBA expires, the extinguished past practices must be limited to those based on actions taken under the auspices of "clear and unmistakable" CBA language, which is the standard that the Board (with only mixed acceptance in the courts) uniformly applies when evaluating contract waivers. See fn. 23, supra. As noted in the text, my colleagues also concede that "extracontractual" past practices remain part of the status quo and may be continued (indeed, *must* be continued) without bargaining following a CBA's expiration. See text accompanying fn. 61, infra.

[61] Majority's opinion, slip op. at 4 (emphasis added).

[62] Majority's opinion, slip op. at 12.

[63] Ostensibly, my colleagues are not finding for the time being that employers violate the Act by taking actions, following a CBA's expiration, based on "a practice of automatic change based on fixed timing and criteria [where] that practice was established pursuant to a management-rights clause" (Majority's opinion, slip op. at 12 fn. 31). Although this caveat appears in their opinion—just like they state there is no need for a meticulous examination of prior CBAs to differentiate between past practices that are based on conferred contractual rights and "extracontractual" past practices—my colleagues' analysis permits no other conclusion. My colleagues find that a CBA's expiration—which discontinues all contractual waivers—also extinguishes past practices that are based on contractual rights. This rationale necessarily encompasses *all* "contractual" past practices under Section 8(a)(5), even if employers elected to exercise their contractual discretion by taking action "based on fixed timing and criteria." For the reasons explained in the text, I believe that treating past practices in these circumstances as if they did not exist is directly contrary to *Katz* and extensive Board case law.

their entire rationale underlying their decision in this case),[64] and it is contrary to other Board cases.[65]

Seventh, I believe it is equally objectionable for my colleagues to find that an employer's actions always constitute a "change" under *Katz* whenever the employer's actions involve "discretion." Although the Supreme Court in *Katz* mentioned that the employer's "merit increases" at issue in that case involved "a large measure of discretion," this was a factual observation made by the Court when comparing the "merit increases" to a different "long-standing practice" that involved "quarterly or semiannual merit reviews," and the Court referred to the latter as "*so-called* 'merit raises'" because they were "*in fact* simply *automatic* increases."[66] The Supreme Court certainly did *not* articulate a blanket rule that every action taken by an employer involving any "discretion" required advance notice and the opportunity for bargaining, even if the employer was *continuing* to do precisely what it had always done. Rather, even regarding the "merit increases" at issue in *Katz*, the Supreme Court still examined whether they constituted a "change," and the Court examined whether they were "in line with the company's long-standing practice" and whether it was possible "for a union to know whether or not there has been a substantial departure from past practice."[67] Moreover, the Board has applied *Katz* in circumstances where the employer's actions involved substantial discretion. For example, in *Westinghouse*, the employer engaged in unilateral subcontracting implemented "thousands of contracts," and the Board found that no "change" occurred within the meaning of *Katz* because the subcontracting had not "materially varied in kind or degree from what had been customary in the past."[68] Additionally, the majority's holding here that the exercise of "discretion" precludes unilateral action is squarely contrary to the Board's treatment of Section 8(a)(5) cases addressing whether past changes (e.g., wage increases) are part of the "status quo" that *must be continued* without bargaining based on the *Katz* definition of "change." In these cases, as noted above, the Board has held it does not constitute a "change" for an employer to grant unilateral wage increases—indeed, the Board finds the employer is *required* to give those increases without bargaining—even though past wage increases involved substantial employer discretion.[69]

Finally, the change in the law adopted by my colleagues here goes to one of the most central aspects of the Act—the duty to bargain—and the inability of employers to act without, in every instance, affording separate notification and opportunities for bargaining until the parties bargain to agreement on a complete contract or overall impasse may substantially undermine the employers' ability to operate their businesses. My colleagues create confusion when parties need to know the scope of their respective rights and obligations by constructing standards that will prevent employers from having any "certainty beforehand" regarding when they may safely continue to act as they have in the past.[70] Applicable here are the Supreme Court's observations in *First National Maintenance*, where the Court (evaluating partial closing decisions) found that no duty to bargain existed:

> An employer would have *difficulty determining beforehand* whether it was faced with a situation *requiring* bargaining or one that [was] . . . sufficiently compelling to *obviate* the duty to bargain. . . . *A union, too, would have difficulty determining the limits of its prerogatives*, whether and when it could use its economic powers to try to alter an employer's decision, or whether, in doing so, it would trigger sanctions from the Board.[71]

C. Application of the Law to DuPont's Actions Here

As described by my colleagues and in the D.C. Circuit's opinion remanding this case, DuPont had been party to successive CBAs at its facilities in Louisville, Kentucky and Edge Moor, Delaware. During bargaining at Edge Moor in 1993 and at Louisville in 1994, the parties agreed that the unit employees would be covered by DuPont's Beneflex Plan. From 1994 through 2004, DuPont made changes to the Beneflex Plan every year during the annual enrollment period and applied those changes to the unit employees at Louisville (1995 to 2002) and Edge Moor (1994 to 2004). The changes included "increases in the premiums for medical, life, vision, and dental insurance, changes in coverage, and the addition and elimination of plan options."[72] DuPont applied the changes "to employees at all Du Pont facilities, to union and non-union employees alike."[73] After the

[64] See fn. 60–61and accompanying text supra.

[65] See, e.g., *Arc Bridges, Inc.*, 355 NLRB at 1222; *Mission Foods*, 350 NLRB at 337 (2007*); Central Maine Morning Sentinel*, 295 NLRB at 376.

[66] *Katz*, 369 U.S. at 746–747 (emphasis added).

[67] Id.

[68] *Westinghouse*, 150 NLRB at 1576; see also *Shell Oil*, 149 NLRB at 288.

[69] See *Arc Bridges, Inc.*, 355 NLRB at 1222; *Mission Foods*, 350 NLRB at 337; *Central Maine Morning Sentinel*, 295 NLRB at 376.

[70] *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 679 (1981).

[71] Id. at 684–686 (emphasis added; citations omitted).

[72] *DuPont* remand, 682 F.3d at 66–67.

[73] Id. at 66–67.

CBAs at Louisville and Edge Moor expired, and while DuPont was engaged in bargaining with the union at each facility for a successor contract, DuPont announced similar types of changes during the annual enrollment period as DuPont had previously made.[74]

In these circumstances, consistent with *Katz*, I believe the Board must find that DuPont's changes were lawfully implemented, consistent with its "long-standing practice."[75] Previously, the D.C. Circuit reversed and remanded the Board's prior decisions in these cases[76] because (i) the Board's own cases contradicted the Board's finding that DuPont's actions constituted an unlawful unilateral change, and (ii) the Board had not given a "reasoned justification" for departing from its own precedent.[77] With all due respect to my colleagues, I believe the majority still has provided no "reasoned justification" for the standards being adopted today, and reasonable or not, I believe they are erroneous as a matter of law.

Thus, as the D.C. Circuit already concluded in its earlier decision, DuPont, "by making unilateral changes to Beneflex after the expiration of the CBAs, maintained the status quo expressed in the Company's past practice,"[78] which warrants a conclusion that the changes were lawful under the Supreme Court's decision in *Katz*.

Two other considerations deserve further comment here.

First, my colleagues disregard the fact that parties have a particular need for certainty and predictability, which the Supreme Court emphasized in *First National Maintenance*,[79] when dealing with medical benefits like those at issue here. I do not at all suggest that because of the importance of medical benefits, changes involving such benefits warrant a departure or exception from the bargaining obligations imposed by our statute. If anything, the importance of these benefits—no less than wages—warrants vigilance by the Board to ensure that parties satisfy their bargaining obligations. However, I believe the Board should recognize that the *Katz* holding—permitting unilateral employer actions that do not constitute a "change" because they are similar in kind and degree to actions taken previously—is sufficiently flexible to accommodate actions that require advance planning and involve significant complexity, provided the employer acts consistently with its past practice. In the instant case, these considerations are especially relevant, given the existence of fixed annual enrollment periods, the participation by represented employees in benefit plans that applied throughout the company, and the lack of certainty when ongoing negotiations would conclude.[80]

Second, any concerns about the union being excluded from bargaining over actions that are consistent with past practice can be easily addressed. In fact, they have *already* been addressed by Congress in Section 8(a)(5) of the Act, by the Supreme Court in *Katz* and other cases, and by the Board in many decisions. Under existing law, even when an employer's past practice permits the employer to take the same or similar actions unilaterally under *Katz* (i.e., without first giving its union notice and the opportunity for bargaining), the employer is required under Section 8(a)(5) to engage in bargaining over the same subject matter—indeed, over the actions being taken unilaterally—upon request by the union. This duty to engage in bargaining upon request over mandatory subjects, which includes matters that may be unilaterally implemented by an employer under *Katz*, is completely unaffected by any past practice, and an employer's refusal to engage in such bargaining clearly constitutes a violation of Section 8(a)(5).

As to this last issue, it is ironic that my colleagues have insisted on completely overhauling the Act's treatment of bargaining obligations in the instant case. The record contains some suggestion that the Union at DuPont's Louisville plant requested bargaining over the potential Beneflex changes, and DuPont refused to engage in such bargaining in reliance on DuPont's past practice described above. Such a refusal would clearly constitute a violation of Section 8(a)(5), not because it is a unilateral "change" under *Katz*, but rather because it violates an employer's separate duty to bargain upon request regarding any mandatory subject, and this separate duty is completely unaffected by any past practice.[81] Unfortunately, perhaps in the Board's zeal to use this case to substantially reformulate what constitutes an unlawful unilateral "change" within the meaning of *Katz*, this case was litigated solely on this basis. Similarly, the D.C. Circuit's remand is limited to the Board's treatment of what constitutes a unilateral "change" under *Katz*. Thus, although I believe the record might support the existence of a refusal-to-bargain violation by DuPont, in

[74] Id. at 67.

[75] *Katz*, 369 U.S. at 746.

[76] *E.I. DuPont de Nemours, Louisville Works*, 355 NLRB at 1084; *E.I. DuPont de Nemours & Co. (Edge Moor)*, 355 NLRB at 1096.

[77] 682 F.3d at 67–70.

[78] Id. at 68.

[79] See text accompanying fn. 72, supra.

[80] My colleagues minimize the fact that changes were also limited with regard to timing: they were permitted only during the annual enrollment period. *DuPont* remand, 682 F.3d at 68.

[81] See fns. 11, 23, 35 & 39 and accompanying text supra. As noted previously, the employer's conventional duty to engage in bargaining upon request is subject to certain other potential exceptions, but is unaffected by past practice. See fn. 23, supra.

mistaken reliance on past practice, when the Union in Louisville requested bargaining over the Beneflex changes, this issue is not presently before the Board.

CONCLUSION

I have stated that "when changing existing law, the Board should first endeavor to *do no harm*: we should be vigilant to avoid doing violence to undisputed, decades-old principles that are clear, widely understood, and easy to apply."[82] My colleagues take a well-known word that the Board and the courts (for the most part) have consistently interpreted, and that most people understand—the word *change*—and instead of simply comparing what the employer plans to do *now*, against what it did in the *past*, my colleagues require a detailed examination of past contracts going back years, perhaps decades, to examine what contracts were in effect at what times, what employer actions occurred when, whether the past actions were taken pursuant to a management rights clause or other contract language, and possibly whether the past actions predated the earliest contract.

In my view, this makes no sense, and it is unsupported by our statute and contrary to the Supreme Court's *Katz* decision. As stated at the outset, in contrast to my colleagues' approach, I believe this case involves a simple question with a straightforward answer. Under *Katz*, an employer must provide notice and the opportunity for bargaining before making a "change" in employment matters, and bargaining is *not* required when no "change" has occurred. Where, as here, the employer takes actions that are not materially different from what has been done in the past, no "change" has occurred and the employer's unilateral actions do not violate Section 8(a)(5) of the Act.

Again, under existing law, even when new actions taken by the employer are consistent with past practice, this leaves unaffected the union's right to request bargaining regarding *all* mandatory subjects (including actions the employer may lawfully take unilaterally), and I agree with the well-established principle that the employer remains bound by its duty to engage in such bargaining, without regard to any practice that may have existed.[83]

For these reasons, I believe DuPont did not violate the Act by making the changes described above without providing advance notice and the opportunity for bargaining. Accordingly, I respectfully dissent from the majority's finding that DuPont violated Section 8(a)(5).

[82] *Purple Communications, Inc.*, 361 NLRB No. 126, slip op. at 18 (2014) (Member Miscimarra, dissenting) (emphasis added).

[83] See fns. 11, 23, 35 & 39, supra, and accompanying text. Again, the employer's conventional duty to engage in bargaining upon request is subject to certain other potential exceptions, but is unaffected by past practice. See fn. 23, supra.

Dated, Washington, D.C. August 26, 2016

Philip A. Miscimarra, Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively with Paper, Allied-Industrial, Chemical, and Energy Workers International Union and its Local 5-2002 (the Union) by making unilateral changes to the benefits of unit employees during periods when the parties are engaged in negotiations for a collective-bargaining agreement and have not reached impasse. The unit is:

> All employees employed by [the Respondent] at its Louisville Works, Louisville, Kentucky, including powerhouse and refrigeration plant employees, chief operators, shift leaders, fire department employees, cafeteria employees, and counter attendants, but excluding all office clerical employees, chemical supervisors, technical engineers, assistant technical engineers, draftsmen, chemists, nurses and hospital technicians, general foremen, foremen, fire chief, guards, and all other supervisors and professional employees as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

WE WILL, before implementing any changes in your wages, hours, or other terms and conditions of employment, notify and, on request, bargain collectively and in

good faith with the Union as your exclusive bargaining representative.

WE WILL, upon request of the Union, restore the unit employees' benefits under the Beneflex package of benefit plans to the terms that existed prior to the unlawful unilateral changes that were implemented on January 1, 2004 and January 1, 2005, and maintain those terms in effect until the parties have bargained to a new agreement or a valid impasse, or until the Union has agreed to changes.

WE WILL make all affected employees whole for any losses that they may have suffered as a result of the unilateral implemented changes in benefits in the manner set forth in the remedy section of the decision.

WE WILL compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 9 within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

E.I. DU PONT DE NEMOURS & COMPANY

The Board's decision can be found at www.nlrb.gov/case/09–CA–040777 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, D.C. 20570, or by calling (202) 273–1940.

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively with the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (U.S.W.), and its Local 4-786 (formerly Paper, Allied-Industrial, Chemical and Energy Workers International Union (PACE) and its Local 2-786) (the Union) by making unilateral changes to the benefits of unit employees during periods when the parties are engaged in negotiations for a collective-bargaining agreement and have not reached impasse. The unit is:

> All employees of the Edge Moor Plant with the exception of the Administrative Secretary to the Plant Manager, Human Resources Assistant, Technologists (Training, Planning, DCS), Work Leader, Nurses, salary role employees exempt under the Fair Labor Standards Act, and supervisory employees with the authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

WE WILL, before implementing any changes in your wages, hours, or other terms and conditions of employment, notify and, on request, bargain collectively and in good faith with the Union as your exclusive bargaining representative.

WE WILL, upon request of the Union, restore the unit employees' benefits under the Beneflex package of benefit plans to the terms that existed prior to the unlawful unilateral changes that were implemented on January 1, 2005, and maintain those terms in effect until the parties have bargained to a new agreement or a valid impasse, or until the Union has agreed to changes.

WE WILL make all affected employees whole for any losses that they may have suffered as a result of the unilateral implemented changes in benefits in the manner set forth in the remedy section of the decision.

WE WILL compensate employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for

Region 4 within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

E.I. DU PONT DE NEMOURS & COMPANY

The Board's decision can be found at www.nlrb.gov/case/09–CA–040777 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, D.C. 20570, or by calling (202) 273–1940.

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 21st day of April, 2017, I caused this Joint Appendix to be filed electronically with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to the following registered CM/ECF users:

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I further certify that on this 21st day of April, 2017, I caused the required copies of the Joint Appendix to be hand filed with the Clerk of the Court.

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